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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1941.

## No. 23

THE UNITED STATES OF AMERICA, AS GUARDIAN OF THE INDIANS OF THE TRIBE OF HUALPAI IN THE STATE OF ARIZONA,

*Petitioner,*

*vs.*

SANTA FE PACIFIC RAILROAD COMPANY,
A CORPORATION,

*Respondent.*

## APPENDIX.

## RESPONDENT'S PRESENTATION OF TREATY AND LAWS PRINCIPALLY AT ISSUE AND OTHER MATTERS OF PUBLIC RECORD.

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### PART I.

### Constitutional and Legislative Bases for Administration of Indian Affairs and the Public Domain.

CONSTITUTION.

Article IV, Section 3, clause 2: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

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* Herein spelled "Walapai".

Article I, Section 8: "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; * * *."

Article II, Section 3: The President "shall take Care that the Laws be faithfully executed, * * *."

STATUTES.

Title 5, Section 485, U. S. C. A.: "The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

"*First.* The public lands, including mines.
"*Second.* The Indians.
"*Third.* Bounty-lands.
"*Fourth.* Education.
"*Fifth.* St. Elizabeths Hospital.
"*Sixth.* Columbia Institution for the Deaf.
"*Seventh.* The Bureau of Mines."

Title 43, Section 2, U. S. C. A.: "The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government."

Section 2, Title 25, U. S. C. A.: "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." (Act of July 9, 1832, 4 Stat. 564; Act of March 3, 1849, Section 5, 9 Stat. 395; Act of July 27, 1868, 15 Stat. 228.)

## PART II.

### Treaty and Statutes.

EXCERPTS FROM TREATY OF GUADALUPE HILDALGO, 9 Stat. 922:

"ART. VIII. Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

"Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

"In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

"ART. IX. The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according

to the principles of the Constitution; and in the meantime, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

* * *

"ART. XI. Considering that a great part of the territories, which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said Government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were mediated or committed within its own territory, against its own citizens.

"It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabitating the territory of either of the two Republics; nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

"And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the Government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican Government. The Mexican authorities will, as far as practicable, give to the Government of the United States notice of such captures; and its agents shall pay the expenses incurred in the maintenance and

transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the Government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

"For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

* * * * *

PROTOCOL.

* * * * *

"1st. The American Government by suppressing the IXth article of the treaty of Guadalupe Hidalgo and substituting the IIId article of the treaty of Louisiana, did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding is that all of that agreement is contained in the 3d article of the treaty of Louisiana. In consequence all of the privileges and guarantees, civil, political, and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the treaty had been retained, will

be enjoyed by them, without any difference, under the article which has been substituted.

"2d. The American Government by suppressing the Xth article of the treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty, preserve the legal value which they may possess, and the grantees may cause their legitimate (titles) to be acknowledged before the American tribunals.

"Conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May, 1846, and in Texas up to the 2d March, 1836."

ORIGINAL DRAFT OF TREATY.

(S. Ex. Doc. 52, 30th Cong., 1st Sess., Proceedings on the Treaty of Guadalupe Hidalgo.)

Article X read as follows:

"All grants of land made by the Mexican government, or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country, since the beginning of the troubles between Texas and the Mexican government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfil the said conditions within the periods limited in the same, respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty; in default of which, the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this article.

"The foregoing stipulation in regard to grantees of land in Texas is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfilment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void.

"The Mexican government declares that no grant whatever of lands in Texas has been made since the second day of March, one thousand eight hundred and thirty-six; and that no grant whatever of lands, in any of the territories aforesaid, has been made since the thirteenth day of May, one thousand eight hundred and forty-six." (Ibid. 49.)

The Senate of the United States deleted from the end of the second paragraph of Article XI the words "nor to provide such Indians with fire-arms or ammunition, by sale or otherwise." (Ibid., 50.)

Concerning stipulations of Article XI, Trist wrote to Buchanan (Ibid., 293) on January 25, 1848:

"The stipulations respecting the Indians inhabiting the transferred territory, independently of their justice, were indispensable to make the treat· acceptable to the northern States, or to any who take the proper interest in their security; in a word, to any one who has the feelings of a Mexican citizen, or at least respect for the obligations which a federal union imposes. Excepting only the specific prohibition against supplying the Indians with fire-arms and ammunition, (if, indeed, this can justly be deemed an exception), those stipulations contain nothing which is not expressed or plainly implied in the treaty of amity, commerce, and navigation, (article 31), which is revived in the present treaty of peace. But to make the article what it must be, to satisfy the public mind of this country, it was necessary that those implied obligations should be set forth in detail, and expressed in the most unequivocal manner. Upon examining the old treaty, I found that it imposes absolutely, and without any saving or qualification whatever as to the practicability of the

thing, the obligation 'to *restrain*,' by force, '*all* hostilities and incursions,' and 'not to *suffer* their Indians to attack;' and also, in regard to captives made by Indians, 'to return them to their country as soon as they know of their being within their respective territories.' I found, also, that the last sentence is so worded as to restrict the prohibition against the purchase of captives, in a manner which could not possible have been intended. In the new treaty the obligations above referred to are expressed with the qualifications demanded by the nature of the subject, in order that they may have the character of a practical law, agreed upon and established upon serious consideration of its requirements, and in the *bona fide* intention that these shall be fulfilled: an intention which stands exposed to serious doubt, when engagements entered into 'in the most solemn manner' are found expressed in a manner so loose, that their exact fulfilment, as expressed, involves impossibilities."

Kearney's Law of 1847 (officially published with New Mexican Laws of 1852):

"*An Act to Enable Pueblo Indians to Bring and Defend Actions:* 'The inhabitants within the territory of New Mexico known by the name of Pueblo Indians, and living in towns or villages built on lands granted to such Indians by the laws of Spain and Mexico, and conceding to such inhabitants certain lands and privileges, to be used for the common benefit are severally hereby created and constituted bodies politic and corporate and shall be known in the law by the name of the Pueblo de ..... (naming it) and by that name they and their successors shall have perpetual succession, sue and be sued, plead and be impleaded, bring and defend in any court of law or equity all such actions, pleas, and matters whatsoever, proper to recover, protest, reclaim, demand or assert the right of such inhabitants, or any individual thereof, to any lands, tenements or hereditaments, possessed, occupied or claimed contrary to law, by any person whatsoever, and to bring and defend all such actions and to

resist any encroachment, claim or trespass made upon such lands, tenements or hereditaments, belonging to such inhabitants, or to any individual.' (December, 1847.)"

New Mexican Statute passed and approved July 14, 1852 (New Mexican Statutes of 1852):

"That all laws that have previously been in force in this Territory that are not repugnant to or inconsistent with the Constitution of the United States, the organic law of the Territory, or any act passed at the present session of the Legislative Assembly, shall be and continue in force, except in Kearney's Code the law concerning Registers of Land."

Excerpts from Act of September 9, 1850, "Chap. XLIX.—*An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries, and of all her Claims upon the United States, and to establish a territorial Government for New Mexico,*" 9 Stat. 446:

"SEC. 2. *And be it further enacted,* That all that portion of the Territory of the United States bounded as follows * * * be, and the same is hereby, erected into a temporary government, by the name of the Territory of New Mexico: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State: *And provided, further,* That, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission."

Section 3 deals with the executive power.

Section 4 deals with the Secretary.

Section 5 delegates legislative power and provides for legislative assemblies.

"SEC. 6. *And be it further enacted*, That every free white male inhabitant, above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, that the right of suffrage, and of holding office, shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the republic of Mexico, concluded February second, eighteen hundred and forty-eight.

"SEC. 7. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislatve assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect."

Section 8 deals with appointment of officers.

Section 9 deals with the powers of officers to hold more than one post.

Section 10 establishes the judicial power and the judiciary.

Section 11 provides for a territorial attorney and marshal.

Section 12 deals with appointment of officers and their salaries.

Section 13 deals with legislative assembly's meetings and the seat of government.

"SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly: *Provided*, That such delegate shall receive no higher sum for mileage than is allowed by law to the delegate from Oregon.

"SEC. 15. *And be it further enacted*, That when the lands in said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same."

Section 16 is a definition of judicial districts.

"SEC. 17. *And be it further enacted*, That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of New Mexico as elsewhere within the United States.

"SEC. 18. *And be it further enacted*, That the provisions of this act be, and they are hereby, suspended until the boundary between the United States and the State of Texas shall be adjusted; and when such adjustment shall have been effected, the President of the

United States shall issue his proclamation, declaring this act to be in full force and operation, and shall proceed to appoint the officers herein provided to be appointed in and for said Territory.

"SEC. 19. *And be it further enacted*, That no citizen of the United States shall be deprived of his life, liberty, or property, in said Territory, except by the judgment of his peers and the laws of the land."

Act of March 3, 1851 (9 Stat. 631):

"CHAP. XLI.—*An Act to ascertain and settle the private Land Claims in the State of California.*

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

"SEC. 2. *And be it further enacted*, That a secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

"SEC. 3. *And be it further enacted*, That such clerks, not to exceed five in number, as may be necessary, shall be appointed by the said commissioners.

"SEC. 4. *And be it further enacted*, That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interest of the United States in the premises, to continue him in such agency as long as the public interest may, in the judgment of the President, require his continuance, and to allow

him such compensation as the President shall deem reasonable. It shall be the duty of the said agent to attend the meetings of the board, to collect testimony in behalf of the United States, and to attend on all occasions when the claimant, in any case before the board, shall take depositions; and no deposition taken by or in behalf of any such claimant shall be read in evidence in any case, whether before the commissioners, or before the District or Supreme Court of the United States, unless notice of the time and place of taking the same shall have been given in writing to said agent, or to the district attorney of the proper district, so long before the time of taking the deposition as to enable him to be present at the time and place of taking the same, and like notice shall be given of the time and place of taking any deposition on the part of the United States.

"SEC. 5. *And be it further enacted*, That the said commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy, whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

"SEC. 6. *And be it further enacted*, That the said commissioners, when sitting as a board, and each commissioner at his chambers, shall be, and are, and is hereby, authorized to administer oaths, and to examine witnesses in any case pending before the commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

"SEC. 7. *And be it further enacted*, That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, or of any claimant or his counsel, to issue writs of subpœna commanding the attendance of a witness or witnesses before the said board or any commissioner.

"SEC. 8. *And be it further enacted*, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commisisoners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

"SEC. 9. *And be it further enacted*, That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the United States, to present a petition to the district Court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a deraignment of the claimant's title, together with a transcript of the report of the board of commissioners, and of the documentary evidence and testimony of the witnesses on which it was founded; and such petition, if presented by the district attorney in behalf of the United States, shall be accompanied by a transcript of the report of the board of commissioners, and of the papers and evidence on which it was founded, and shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, a copy of which petition, if the same shall be presented by a claimant, shall be served on the district attorney of the United States, and, if presented in behalf of the United States, shall be served on the claimant or his attorney; and the party upon whom

such service shall be made shall be bound to answer the same within a time to be prescribed by the judge of the District Court; and the answer of the claimant to such petition shall set forth fully the nature of the claim, and the names of the original and present claimants, and shall contain a deraignment of the claimant's title; and the answer of the district attorney in behalf of the United States shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, copies of which answers shall be served upon the adverse party thirty days before the meeting of the court, and thereupon, at the first term of the court thereafter, the said case shall stand for trial, unless, on cause shown, the same shall be continued by the court.

"SEC. 10. *And be it further enacted*, That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme Court, in case the judgment of the District Court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

"SEC. 11. *And be it further enacted*, That the commissioners herein provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadaloupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable.

"SEC. 12. *And be it further enacted*, That to entitle either party to a review of the proceedings and decision of the commissioners hereinbefore provided for, notice of the intention of such party to file a petition to the District Court shall be entered on the journal

or record of proceedings of the commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the District Court within six months after such decision has been rendered.

"SEC. 13. *And be it further enacted*, That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims, the said surveyor-general shall have the same power and authority as are conferred on the register of the land office and receiver of the public moneys of Louisiana, by the sixth section of the act 'to create the office of surveyor of the public lands for the State of Louisiana,' approved third March, one thousand eight hundred and thirty-one; *provided, always*, That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided, further*, That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose in-

stance the claim to the said lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the commissioner of the general land office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

"SEC. 14. *And be it further enacted*, That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six being duly proved, shall be prima facie evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village, shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village.

"SEC. 15. *And be it further enacted*, That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

"SEC. 16. *And be it further enacted*, That it shall be the duty of the commissioners herein provided for

to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

"SEC. 17. *And be it further enacted*, That each commissioner appointed under this act shall be allowed and paid at the rate of six thousand dollars per annum; that the secretary of the commissioners shall be allowed and paid at the rate of four thousand dollars per annum; and the clerks herein provided for shall be allowed and paid at the rate of one thousand five hundred dollars per annum; the aforesaid salaries to commence from the day of the notification by the commissioners of the first meeting of the board.

"SEC. 18. *And be it further enacted*, That the secretary of the board shall receive no fee except for furnishing certified copies of any paper or record, and for issuing writs of subpoena. For furnishing certified copies of any paper or record, he shall receive twenty cents for every hundred words, and for issuing writs of subpoena, fifty cents for each witness; which fees shall be equally divided between the said secretary and the assistant clerk.

"Approved, March 3, 1851."

Act of March 3, 1853, "An Act to extend Preemption Rights to certain Lands therein mentioned," 10 Stat. 244:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the preemption laws of the United States, as they now exist, be and they are hereby extended over the alternate reserved sections of public lands along the lines of all the railroads in the United States wherever public lands have been or may be granted by acts of Congress; and that it shall be the privilege of the persons residing on any of said reserved lands to pay for the same in soldiers' bounty land warrants, estimated at a dollar and twenty-five cents per acre, or in gold and silver, or both together,

in preference to any other person, and at any time before the same shall be offered for sale at auction: *Provided*, That no person shall be entitled to the benefit of this act who has not settled and improved, or shall not settle and improve, such lands prior to the final allotment of the alternate sections to such railroads by the General Land Office: *And provided further*, That the price to be paid shall in all cases be two dollars and fifty cents per acre, or such other minimum price as is now fixed by law, or may be fixed upon lands hereafter granted; and no one person shall have the right of preemption to more than one hundred and sixty acres: *And provided further*, That any settler who has settled or may hereafter settle on lands heretofore reserved on account of claims under French, Spanish, or other grants which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of preemption granted by this act and the act of fourth of September, eighteen hundred and forty-one, entitled 'An act to appropriate the proceeds of the public lands and to grant preemption rights,' after the lands shall have been released from reservation, in the same manner as if no reservation existed."

Act of July 22, 1854 (10 Stat. 308), "*An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes*":

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a Surveyor-General for New Mexico, whose annual salary shall be three thousand dollars, and whose power, authority, and duties shall be the same as those provided by law for the Surveyor-General of Oregon; he shall have proper allowances for clerk hire, office rent, and fuel, not exceeding what now is or hereafter may be allowed by law to the said Surveyor-General of Oregon; and he shall locate his

office from time to time at such places as may be directed by the President of the United States.

"SEC. 2. *And be it further enacted*, That, to every white male citizen of the United States, or every white male above the age of twenty-one years who has declared his intention to become a citizen, and who was residing in said Territory prior to the first day of January, eighteen hundred and fifty-three, and who may be still residing there, there shall be, and hereby is, donated one quarter section, or one hundred and sixty acres of land. And to every white male citizen of the United States, or every white male above the age of twenty-one years who has declared his intention to become a citizen, and who shall have removed or shall remove to and settle in said Territory between the first day of January, eighteen hundred and fifty-three, and the first day of January, eighteen hundred and fifty-eight, there shall in like manner be donated one quarter-section, or one hundred and sixty acres, on condition of actual settlement and cultivation for not less than four years: *Provided, however*, That each of said donations shall include actual settlement and improvement of the donee, and shall be selected by legal subdivisions, within three months after the survey of the land where the settlement was made before the survey; and where the settlement was made after the survey, then within three months after the settlement has been made; and all persons failing to designate the boundaries of their claims within that time, shall forfeit all right to the same.

"SEC. 3. *And be it further enacted*, That, on proof of the settlement and cultivation required by this act, to the satisfaction of the surveyor-general, or other officer designated by law for that purpose, subject to the supervision of the Secretary of the Interior, a certificate shall be issued to the party entitled, on presentation of which, if approved by the Secretary of the Interior, a patent shall issue thereon: *Provided, however*, That on the death of any such settler before the completion of the four years' occupancy and cultivation required by this act, the right shall descend to

his heirs at law, who shall be entitled to a certificate and patent, as aforesaid, on proof, as before provided, of continued occupancy and cultivation by such settler to the time of his death: *Provided, however*, That when lands are claimed under any of the provisions of this act by persons who are not citizens of the United States, patents shall not issue therefor until they become citizens.

"SEC. 4. *And be it further enacted*, That none of the provisions of this act shall extend to mineral or school lands, salines, military or other reservations, or lands settled on and occupied for purposes of trade and commerce, and not for agriculture, and all legal subdivisions settled on and occupied, in whole or in part, for purposes of trade and commerce, and not for agriculture, shall be subject to the provisions of the act of twenty-third of May, eighteen hundred and forty-four, in relation to town sites on the public lands, whether so settled and occupied before or after the survey of said lands, except that said lands shall be donated instead of being sold.

"SEC. 5. *And be it further enacted*, That when the lands in the said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township, in said Territory, shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be created out of the same.

"SEC. 6. *And be it further enacted*, That, when the lands in said Territory shall be surveyed as aforesaid, a quantity of land equal to two townships shall be, and the same is hereby, reserved for the establishment of a University in said Territory, and in the State hereafter to be created out of the same, to be selected, under the direction of the legislature, in legal subdivisions of not less than one half-section.

"SEC. 7. *And be it further enacted*, That any of the lands not taken under the provisions of this act shall be subject to the operation of the Preemption Act of

fourth September, eighteen hundred and forty-one, whether settled upon before or after the survey; and, in all cases where the settlement was made before the survey, the settler shall file his declaration within three months after the survey is made and returned; and any person claiming a donation under this act shall be permitted to enter the land claimed by him at any time prior to the four years' occupancy and cultivation required, by paying therefor at the rate of one dollar and twenty-five cents per acre, and proving occupancy and cultivation up to the time of such payment.

"SEC. 8. *And be it further enacted*, That it shall be the duty of the Surveyor-General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal

by the government, and shall not be subject to the donations granted by the previous provisions of this act.

"SEC. 9. *And be it further enacted*, That full power and authority are hereby given the Secretary of the Interior to issue all needful rules and regulations for fully carrying into effect the several provisions of this act.

"SEC. 10. *And be it further enacted*, That the President of the United States shall be and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a Surveyor-General for the Territories of Nebraska and Kansas, who shall locate his office at such place as the President of the United States shall from time to time direct, and whose duties, powers, obligations and responsibilities and compensation shall be the same as those of the Surveyor-General of Wisconsin and Iowa, and who shall be allowed the same amount for office rent, fuel, incidental expenses, and clerk hire, as is allowed to said Surveyor-General of Wisconsin and Iowa.

"SEC. 11. *And be it further enacted*, That said Surveyor-General shall cause the necessary surveys to be made in said Territories of standard meridian, base, and parallel lines, and of township and subdivisional lines, under such rules and regulations as shall be prescribed by the Commissioner of the General Land-Office.

"SEC. 12. *And be it further enacted*, That all the lands to which the Indian title has been or shall be extinguished within said Territories of Nebraska and Kansas, shall be subject to the operations of the Preemption Act of fourth September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned; *Provided, however*, That where unsurveyed lands are claimed by preemption, notice of the specific tracts claimed shall be filed within three months after the survey has been made in the field, and on failure to file such notice or to pay for the tracts claimed before the day fixed for the public sale of the lands by the proclamation of the President of the United States, the parties claiming

such lands shall forfeit all right thereto: *Provided* said notices may be filed with the Surveyor-General, and to be noted by him on the township plats, until other arrangements shall have been made by law for that purpose.

"SEC. 13. *And be it further enacted*, That the public lands in the Territory of Nebraska, to which the Indian title shall have been extinguished, shall constitute a new land district to be called the Omaha District; and the public lands in the Territory of Kansas, to which the Indian title shall have been extinguished, shall constitute a new land district, to be called the Pawnee District: the officers for each of which districts shall be established at such points as the President may deem expedient; and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a Register and Receiver of Public Moneys for each of said districts, who shall each be required to reside at the site of their respective offices, and they shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land-offices of the United States. And the President is hereby authorized to cause the surveyed lands to be exposed for sale from time to time, in the same manner and upon the same terms and conditions as the other public lands of the United States."

Act of February 24, 1863 (12 Stat. 664), "*An Act to provide a temporary Government for the Territory of Arizona, and for other Purposes*":

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all that part of the present Territory of New Mexico situate west of a line running due south from the point where the southwest corner of the Territory of Colorado joints the northern boundary of the Territory of New Mexico to the southern boundary line of said Territory of New Mexico be, and the same is hereby, erected into a temporary government by the name of the Territory of Arizona: *Provided*, That nothing contained in the provisions of this act shall

be construed to prohibit the Congress of the United States from dividing said Territory or changing its boundaries in such manner and at such times as it may deem proper: *Provided, further*, That said government shall be maintained and continued until such time as the people residing in said Territory shall, with the consent of Congress, form a State government, republican in form, as prescribed in the Constitution of the United States, and apply for and obtain admission into the Union as a State, on an equal footing with the original States.

"SEC. 2. *And be it further enacted*, That the government hereby authorized shall consist of an executive, legislative, and judicial power. The executive power shall be vested in a governor. The legislative power shall consist of a council of nine members, and a house of representatives of eighteen. The judicial power shall be vested in a supreme court, to consist of three judges, and such inferior courts as the legislative council may by law prescribe; there shall also be a secretary, a marshal, a district attorney, and a surveyor-general for said Territory, who, together with the governor and judges of the supreme court, shall be appointed by the President, by and with the advice and consent of the Senate, and the term of office for each, the manner of their appointment, and the powers, duties, and the compensation of the governor, legislative assembly, judges of the supreme court, secretary, marshal, district attorney, and surveyor-general aforesaid, with their clerks, draughtsman, deputies, and sergeant-at-arms, shall be such as are conferred upon the same officers by the act organizing the Territorial government of New Mexico, which subordinate officers shall be appointed in the same manner, and not exceeded in number those created by said act; and acts amendatory thereto, together with all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act, are hereby extended to and continued in force in the said Territory of Arizona, until repealed or amended by future legislation: *Provided*, That no salary shall be due or paid the officers created by this act until they have entered

upon the duties of their respective offices within the said Territory.

"SEC. 3. *And be it further enacted*, That there shall neither be slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted; and all acts and parts of acts, either of Congress or of the Territory of New Mexico, establishing, regulating, or in any way recognizing the relation of master and slave in said Territory, are hereby repealed."

CHAP. XXIV. The Howell Code (Arizona, 1864):

"SEC. 6. Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Quintero on the 30th day of May, 1848, and the Gadsden treaty of 1854, of the age of twenty-one years, who shall have been a resident of the Territory six months next preceding the election, and the county or precinct in which he claims his vote ten days, shall be entitled to vote at all elections which are now, or hereafter may be, authorized by law. * * *

"SEC. 55. At the general election to be holden on the first Wednesday of September, one thousand eight hundred and sixty-five, there shall be elected, under the provisions of this chapter, a delegate to the congress of the United States, for the term to commence on the fourth day of March next, and thereafter such delegate shall be elected at the general election held next previously to the commencement of his term of office, on the fourth day of March next after such election."

Excerpt from the Act of March 3, 1865 (13 Stat. 541, 559):

"All that part of the public domain in the Territory of Arizona, lying west of a direct line from Half-Way Bend to Corner Rock on the Colorado River, containing about seventy-five thousand acres of land, shall be set apart for an Indian reservation for the Indians of said river and its tributaries."

Act of July 27, 1866 (14 Stat. 292):

"Chap. CCLXXVIII.—An act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That John B. Brown, Anson P. Morrill, Samuel F. Hersey, William G. Crosby, Samuel E. Spring, Samuel P. Dinsmore, of Maine; N. S. Upham, Frederick Smyth, Onslow Stearns, S. G. Griffin, William E. Chandler, of New Hampshire; T. W. Parke, H. H. Baxter, John Gregory Smith, A. P. Lyman, of Vermont; Walter S. Burges, William S. Slater, Steven Harris, Thomas P. Shepard, of Rhode Island; William Merritt, Alexander H. Bullock, George L. Stearns, Genery Twitchell, Charles H. Warren, Chester W. Chapin, of Massachusetts; John Boyd, Robert C. Wetmore, John T. Wait, Cyrus Northup, of Connecticut; Solon Humphreys, J. Bigler, Homer Ramsdell, Isaac H. Knox, John A. C. Gray, Daniel L. Ross, A. V. Stout, M. K. Jessup, R. E. Fenton, E. L. Fancher, J. C. Fremont, James Hoy, Jesse M. Boles, Edward Gilbert, James P. Robinson, Oliver C. Billings, of New York; Charles Bachelor, John Edgar Thompson, Morton McMichael, T. Haskin Du Puy, Thomas A. Scott, Charles Rickettson, William Lyon, George W. Cass, Levi Parsons, of Pennsylvania; Charles Knap, J. L. N. Stratton, James B. Dayton, Robert F. Stockton, Alexander G. Cattell, A. W. Markley, of New Jersey; John W. Garrett, Charles J. M. Gwinn, Robert Fowler, Jacob Tome, Thomas M. Lanahan, of Maryland; Charles J. Dupont, Henry Ridgley, Andrew C. Gray, Nat. Smythers, of Delaware; Bellamy Storer, George B. Senter, William Baker, Samuel Galloway, David Tod, Charles Anderson, Bird B. Chapman, Edward Sturgis, Israel Dille, of Ohio; Edwin Peck, William D. Griswold, James P. Luse, Samuel E. Perkins, Conrad Baker, of Indiana; Richard J. Oglesby, N. B. Judd, Samuel A. Buckmaster, D. L. Phillips, L. P. Sanger, of Illinois; Eber B.

Ward, Omar D. Conger, Nathaniel W. Brooks, Alexander H. Morrison, of Michigan; Z. G. Simmons, Alexander Mitchel, J. J. Williams, G. A. Thompson, J. J. R. Pease, John H. Hersey, of Wisconsin; Henry A. Smith, Sherman Finch, William Mitchell, R. F. Crowell, L. F. Hubbard, E. F. Drake, of Minnesota; Lyman Cook, Platt Smith, Jacob Butler, Henry I. Reid, Hoyt Sherman, of Iowa; William G. Brownlow, of Tennessee; Thomas C. Fletcher, B. R. Bonner, John M. Richardson, Emil Pretorious, E. W. Fox, R. J. McElheny, Charles H. Howland, Madison Miller, George W. Fishback, T. J. Hubbard, George Knapp, Charles K. Dickson, A. G. Braun, G. L. Hewitt, P. A. Thompson, James W. Thomas, Charles E. Moss, Edward Walsh, A. R. Easton, Truman J. Horner, J. B. Eads, D. P. Garrison, W. A. Kayser, George P. Robinson, of Missouri; Thomas E. Bramlette, Benjamin Grats, C. E. Warren, Lazarus W. Powell, John Mason Brown, Joshua Speed, of Kentucky; Solon Thatcher, Jacob Stotter, William B. Edwards, James G. Blunt, Robert McBratney, of Kansas; Harrison Hagaus, James Cook, Robert Crangle, Benjamin H. Smith, of West Virginia; Lorenzo Sherwood, A. J. Hamilton, of Texas; William Gilpin, Henry C. Leach, of Colorado; Phinneas Banning, Timothy G. Phelps, William B. Carr, Edward F. Beale, Fred. F. Lowe, Benj. B. Redding, B. W. Hathaway, Leonidas Haskell, Frederick Billings, of California; W. S. Ladd, J. R. Moores, Walter Monteith, John Kelly, B. F. Dowell, of Oregon; James L. Johnson, Henry Connelly, Franciscus Perea, of New Mexico; J. H. Mills, A. P. K. Safford, E. S. Davis, of Nevada; King S. Woolsey, William H. Hardy, Coles Bashford, of Arizona; Henry D. Cooke, of the District of Columbia; and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style and title of the 'Atlantic and Pacific Railroad Company,' and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended,

in all courts of law and equity within the United States, and may make and have a common seal. And said corporation is hereby authorized and empowered to lay out, locate, and construct, furnish, maintain, and enjoy, a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian River, thence to the town of Albuquerque, on the River Del Norte, and thence by way of the Agua Frio, or other suitable pass to the head waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be *be* [*sic*] selected by said company for crossing; thence, by the most practicable and eligible route, to the Pacific. The said company shall have the right to construct a branch from the point at which the road strikes the Canadian River eastwardly, along the most suitable route as selected, to a point in the western boundary line of Arkansas, at or near the town of Van Buren. And the said company is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act, as herein set forth. The capital stock of said company, shall consist of one million shares of one hundred dollars each, which shall in all respects be deemed personal property, and shall be transferable in such manner as the laws of said corporation shall provide. The persons hereinbefore named are hereby appointed commissioners, and shall be called the board of commissioners of the 'Atlantic and Pacific Railroad Company,' and fifteen shall constitute a quorum for the transaction of business. The first meeting of said board of commissioners shall be held at the Turner Hall, in the city of Saint Louis, on the first day of October, anno Domini eighteen hundred and sixty-six, or at such time within three months thereafter as any ten commissioners herein named from Missouri shall appoint, notice of which shall be given by them to the

other commissioners by publishing said notice in at least one daily newspaper in the cities of Boston, New York, Cincinnati, Saint Louis, Memphis, and Nashville, once a week for at least four weeks previous to the day of meeting. Said board shall organize by the choice from its number of a president, vice-president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof, as they may deem proper. The secretary shall be sworn to the faithful performance of his duties, and such oath shall be entered upon the records of the company, signed by him, and the oath verified thereon. The president and secretary of said boards shall, in like manner, call all other meetings, naming the time and place thereof. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities or other places in the United States as they or a quorum of them shall determine, within twelve months after the passage of this act, to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as ten thousand shares shall in good faith be subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened, at least fifteen days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by lawful proxy, then and there shall elect, by ballot, thirteen directors for said corporation; and in such election each share of said capital stock shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners, and in case of their absence or inability any two of the officers of said board, shall act as inspectors of said election, and shall certify, under

their hands, the names of the directors elected at said meeting. And the said commissioners, treasurer, and secretary shall then deliver over to said directors all the moneys, properties, subscription books, and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. Annual meetings of the stockholders of the said corporation for the choice of officers (when they are to be chosen), and for the transaction of business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

"SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to the said Atlantic and Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary grounds for station-buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations; and the right of way shall be exempt from taxation within the Territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act.

"SEC 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops,

munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof may be selected as above provided: *And provided further*, That the word 'mineral,' when it

occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.'

"SEC. 4. *And be it further enacted*, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

"SEC. 5. *And be it further enacted*, That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turn-outs, stations, and watering-places, and all other appurtenances, including furniture and rolling-stock, equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be con-

structed a telegraph line, of the most substantial and approved description, to be operated along the entire line: *Provided*, That the said company shall not charge the Government higher rates than they do individuals for the like transportation and telegraphic service. And it shall be the duty of the Atlantic and Pacific Railroad Company to permit any other railroad which shall be authorized to be built by the United States, or by the legislature of any Territory or State in which the same may be situated, to form running connections with it on fair and equitable terms.

"SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or preemption, before or after they are surveyed, except by said company, as provided in this act; but the provision of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the act amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May twenty, eighteen hundred and sixty two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

"SEC. 7. *And be it further enacted*, That the said Atlantic and Pacific Railroad Company be, and is hereby, authorized and empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road not exceeding in width one hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-houses, or any other structures required in the construction and working of said road. And the said company

shall have the right to cut and remove trees and other material that might, by falling, encumber its road-bed, though standing or being more than two hundred feet from the line of said road. And in case the owner of such lands or premises, and the said company cannot agree as to the value of the premises taken, or to be taken, for the use of said road, the value thereof shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by either party to any court of record in any of the Territories in which the lands or premises to be taken lie; and said commissioners, in their assessment of damages, shall appraise such premises at what would have been the value thereof if the road had not been built. And upon return into court of such appraisement, and upon the payment into the same of the estimated value of the premises taken for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved at said appraisement may, within thirty days after the same has been returned into court, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary and proper in the construction of its road. And said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal; and in case the party appealing does not obtain a verdict more favorable, such party shall pay the whole cost incurred by the appellee, as well as his own, and the payment into court, for the use of the owner of said premises taken, a sum equal to that finally awarded, shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintenance and operation of said road. And in case any of the lands to be taken as aforesaid shall be held by an infant, femme covert, non compos, insane person, or persons residing without the territory with-

in which the lands to be taken lie, or persons subjected to any legal disability, the court may appoint a guardian, for any party under any disqualification, to appear in proper person, who shall give bonds, with sufficient surety or sureties, for the proper and faithful execution of his trust, and who may represent in court the person disqualified, as aforesaid, from appearing, when the same proceedings shall be had in reference to the appraisement of the premises to be taken for the use of said company, and with the same effect as has been already described; and the title of the company to the lands taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case any party shall have a right or claim to any land for a term of years, or any interest therein, in possession, reversion, or remainder, the value of any such estate, less than a fee simple, shall be estimated and determined in the manner hereinbefore set forth. And in case it shall be necessary for the company to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purposes of said railroad, and may institute proceedings, in manner described, for the purpose of ascertaining the value of, and of acquiring a title to, the same; but the judge of the court hearing said suit shall determine the kinds of notice to be served on such owner or owners, and he may in his discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claims to damages against said company shall be barred

"SEC. 8. *And be it further enacted*, That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the

second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

"SEC. 9. *And be it further enacted*, That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

"SEC. 10. *And be it further enacted*, That all people of the United States shall have the right to subscribe to the stock of the Atlantic and Pacific Railroad Company until the whole capital named in this act of incorporation is taken up by complying with the terms of subscription.

"SEC. 11. *And be it further enacted*, That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

"SEC. 12. *And be it further enacted*, That the acceptance of the terms, conditions and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the Secretary of Interior.

"SEC. 13. *And it be further enacted*, That the directors of said company shall make and publish an annual report of their proceedings and expenditures, verified by the affidavits of the president and at least

six of the directors, a copy of which shall be deposited in the office of said Secretary of the Interior, and they shall, from time to time, fix, determine, and regulate the fares, tolls, and charges to be received and paid for transportation of persons and property on said road, or any part thereof.

"SEC. 14. *And be it further enacted*, That the directors chosen in pursuance of the first section of this act shall, so soon as may be after their election, elect from their own number a president and vice-president; and said board of directors shall, from time to time, and so soon as may be after their election, choose a treasurer and secretary, who shall hold their offices at the will and pleasure of the board of directors. The treasurer and secretary shall give such bonds, with such security as the said board from time to time may require. The secretary shall, before entering upon his duty, be sworn to the faithful discharge thereof, and said oath shall be made a matter of record upon the books of said corporation. No person shall be a director of said company unless he shall be a stockholder, and qualified to vote for directors at the election at which he shall be chosen.

"SEC. 15. *And be it further enacted*, That the president, vice-president, and directors shall hold their offices for the period indicated in the by-laws of said company, not exceeding three years, respectively, and until others are chosen in their place, and qualified. In case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, the corporation shall not for that excuse be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors. The directors, of whom seven, including the president, shall be a quorum for the transaction of business, shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate, and effects of the company, the transfer of shares, the duties and conduct of their officers and servants touching the election and meeting of the directors, and all matters whatso-

ever which may appertain to the concerns of said company; and the said board of directors may have full power to fill any vacancy or vacancies that may occur from any cause or causes from time to time in their said board. And the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of the company, and to do all acts and things touching the location and construction of said road.

"SEC. 16. *And be it further enacted*, That it shall be lawful for the directors of said company to require payment of the sum of ten per centum cash assessment upon all subscriptions received of all subscribers, and the balance thereof at such times and in such proportions and on such conditions as they shall deem to be necessary to complete the said road and telegraph lines within the time in this act prescribed. Sixty days' previous notice shall be given of the payments required, and of the time and place of payment, by publishing a notice once a week in one daily newspaper in each of the cities of Boston, New York, Cincinnati, Saint Louis, Memphis, and Nashville, and in case any stockholder shall neglect or refuse to pay, in pursuance of such notice, the stock held by such person shall be forfeited absolutely to the use of the company, and also any payment or payments that shall have been made on account thereof, subject to the condition that the board of directors may allow the redemption on such terms as they may prescribe.

"SEC. 17. *And be it further enacted*, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted to or conferred on said company by the Congress of the United States, by the legislature of any State, or by any corporation, person, or persons, or by any Indian tribe or nation through whose reservation the road herein provided for may pass; and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid, or assistance, to its own use, for the purpose aforesaid: *Provided*, That any such grant or donation,

power, aid, or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States.

"SEC. 18. *And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.

"SEC. 19. *And be it further enacted*, That unless the said Atlantic and Pacific Railroad Company shall obtain bona fide subscriptions to the stock of said company to the amount of one million of dollars, with ten per centum paid, within two years after the passage of and approval of this act, it shall be null and void.

"SEC. 20. *And be it further enacted*, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act.

"SEC. 21. *And be it further enacted*, That whenever in any grant of land or other subsidies, made or hereafter to be made, to railroads or other corporations, the United States has reserved the right, or shall reserve it, to appoint directors, engineers, commissioners, or other agents to examine said roads, or act in conjunction with other officers of said company or companies, all the costs, charges, and pay of said directors,

engineers, commissioners, or agents shall be paid by the respective companies. Said directors, engineers, commissioners, or agents shall be paid for said services the sum of ten dollars per day, for each and every day actually and necessarily employed, and ten cents per mile for each and every mile actually and necessarily travelled, in discharging the duties required of them, which per diem and mileage shall be in full compensation for said services. And in case any company shall refuse or neglect to make such payments, no more patents for lands or other subsidies shall be issued to said company until these requirements are complied with.

"Approved, July 27, 1866."

Excerpt from the appropriation act of July 15, 1870, defining duties of the Surveyor-General (16 Stat. 291, 304):

"For surveying the public lands in Arizona, at rates not exceeding fifteen dollars per lineal mile for standard lines, twelve dollars for township, and ten dollars for section lines, ten thousand dollars: *Provided*, That it shall be the duty of the surveyor-general of Arizona, under such instructions as may be given by the Secretary of the Interior, to ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico; and for this purpose he shall have all the powers conferred, and shall perform all the duties enjoined upon the surveyor-general of New Mexico by the eighth section of an act entitled 'An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers, and for other purposes,' approved July twenty-second, eighteen hundred and fifty-four, and his report shall be laid before Congress for such action thereon as shall be deemed just and proper."

Excerpt from the appropriation act of March 3, 1871 (forbidding treaties with Indian tribes), 16 Stat. 544, 566, Sec. 71, Title 25, U. S. C. A.:

"* * * *Provided*, That hereafter no Indian nation or tribe within the territory of the United States shall

be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; *Provided, further,* That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe."

Act of April 20, 1871 (17 Stat. 19):

"CHAP. XXXIII.—An Act to enable the Atlantic and Pacific Railroad Company to mortgage its road.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Atlantic and Pacific Railroad Company, organized under act of Congress of July twenty-seven, eighteen hundred and sixty-six, is hereby authorized to make and issue its bonds in such form and manner, and for such sums, payable at such times and bearing such rate of interest, and to dispose of them on such terms as its directors may deem advisable; and to secure said bonds, the said company may mortgage its road, equipment, lands, franchises, privileges and other rights and property, subject to such terms, conditions, and limitations as its directors may prescribe. As proof and notice of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior: *Provided,* That if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mortgage made by the company to the lands granted to it by said act shall extend only to so much thereof as shall be coterminous with or appertaining to that part of said road which shall have been constructed at the time of the foreclosure of said mortgage.

"Approved, April 20, 1871."

Act of June 22, 1874 (18 Stat. 194), Chap. 400, "An act for the relief of settlers on railroad lands":

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress*

*assembled*, That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land-office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: *Provided*, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend the lands reserved in any land grant made for railroad purposes: *And provided further*, That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local land-office of the withdrawal of such lands from market."

Excerpt from the appropriation act of July 31, 1876 (19 Stat. 102, 121):

"* * * *And provided further*, That before any land granted to any railroad company by the United States shall be conveyed to such company, or any persons entitled thereto under any of the acts incorporating or relating to said company, unless such company is exempted by law from the payment of such cost, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or persons in interest."

Act of July 6, 1886 (24 Stat. 123):

"CHAP. 637.—An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast, and to restore the same to settlement and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the lands, excepting the right of way and the right, power, and authority given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast,' approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and co-terminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits as contemplated to be constructed under and by the provisions of the said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be and the same are hereby, declared forfeited and restored to the public domain."

Act of July 10, 1886 (24 Stat. 143):

"CHAP. 764.—An act to provide for taxation of railroad-grant lands, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no lands granted to any railroad corporation by any act of Congress shall be exempt from taxation by States, Territories, and municipal corpo-

rations on account of the lien of the United States upon the same for the costs of surveying, selecting, and conveying the same, or because no patent has been issued therefor; but this provision shall not apply to lands unsurveyed: *Provided*, That any such land sold for taxes shall be taken by the purchaser subject to the lien for costs of surveying, selecting, and conveying, to be paid in such manner by the purchaser as the Secretary of the Interior may by rule provide and to all liens of the United States, all mortgages of the United States, and all rights of the United States in respect of such lands: *Provided further*, That this act shall apply only to lands situated opposite to and coterminous with completed portions of said roads, and in organized counties: *Provided further*, That at any sale of lands under the provisions of this act the United States may become a preferred purchaser, and in such case the lands sold shall be restored to the public domain and disposed of as provided by the laws relating thereto.

"SEC. 2. That if any railroad corporation required by law to pay the costs of surveying, selecting, or conveying any lands granted to such c[illegible]any or for its use and benefit by act of Congress s[illegible]or thirty days neglect or refuse to pay any such [illegible] after demand for payment thereof by the Secreta[illegible]of the Interior, he shall notify the Attorney-General, who shall at once commence proceedings to collect the same. But when any sum shall be collected of such railroad company as costs of surveying, selecting, and conveying any tract of land which shall have been purchased under the provisions of section one hereof, the Secretary of the Interior shall out of such collections reimburse said purchaser, his heirs or assigns, the amount of money paid by him as the costs of such surveying, selecting, and conveying.

"SEC. 3. That this act shall not affect the right of the Government to declare or enforce a forfeiture of any lands so granted; but all the rights of the United States to said lands or to any interest therein shall be and remain as if this act had not passed, except as to the lien mentioned in the first section hereof.

"SEC. 4. That section twenty-one of chapter two hundred and sixteen, approved July second, eighteen hundred and sixty-four, is hereby so amended as that the costs of surveying, selecting and conveying therein required to be paid shall become due and payable at and on the demand therefor made by the Secretary of the Interior as provided in section two of this act, and nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said act, as in the opinion of Congress, justice or the public welfare may require, or to impair or waive any right or remedy in the premises now existing in favor of the United States. This act shall be subject to alteration, amendment, or repeal."

Excerpts from general allotment act of February 8, 1887 (24 Stat. 388):

"CHAP. 119—An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows: • • •

"SEC. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or un-

surveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land-office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

"SEC. 5. • • • *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress."

Act of March 3, 1887 (24 Stat. 556):

"CHAP. 376.—An act to provide for the adjustment of land grants made by Congress to aid in the con-

struction of railroads and for the forfeiture of unearned lands, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and is hereby authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

"SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully [*sic*], or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

"SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also*, That he did not voluntarily abandon said original entry: *And provided further*, That if any of said settlers do not

renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

"SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased, upon making proof of the fact of such purchase at the proper land-office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the said amount: *Provided*, That nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase-money therefor from the grantee company, less the amount paid to the United States by such company as by this act required: *And provided*, That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land-grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United

States may have on account of any breach of said conditions.

"SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: *Provided*, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: *Provided further*, That this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

"SEC. 6. That where any such lands have been sold and conveyed, as the property of any railroad company, for the State and county taxes thereon, and the grant to such company has been thereafter forfeited, the purchaser thereof shall have the prior right, which shall continue for one year from the approval of this act, and no longer, to purchase such lands from the United States at the Government price, and patents for such lands shall thereupon issue. *Provided*, That said lands were not, previous to or at the time of the taking

effect of such grant, in the possession of or subject to the right of any actual settler.

"SEC. 7. That no more lands shall be certified or conveyed to any State or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which such State corporation or individual would be rightfully entitled.

"Approved, March 3, 1887."

Act of August 29, 1890 (26 Stat. 369):

"CHAP. 819.—An act to amend an act entitled 'An act for the relief of settlers on railroad lands,' approved June twenty-second, eighteen hundred and seventy-four.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the privileges granted by the aforesaid act approved June twenty-second, eighteen hundred and seventy-four, are hereby extended (subject to the provisos, limitations, and restrictions thereof) to all persons entitled to the right of homestead or pre-emption under the laws of the United States, who have resided upon and improved for five years lands granted to any railroad company, but whose entries or filings have not for any cause been admitted to record."

Act of March 3, 1891 (26 Stat. 854):

"CHAP. 539.—An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be, and hereby is, established a court to be called the court of private land claims * * *."

"SEC. 6. That it shall and may be lawful for any person or persons or corporation, or their legal representatives, claiming lands within the limits of the territory derived by the United States from the Re-

public of Mexico and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado or Wyoming by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm by virtue of the treaties of cession of said country by Mexico to the United States which at the date of passage of this act have not been confirmed by the act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court in the State or Territory where said land is situated and where the said court holds its sessions, but cases arising in the States and Territories in which the court does not hold regular sessions may be instituted at such place as may be designated by the rules of the court. * * *"

"SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord, eighteen hundred and forty-eight, or the treaty concluded between the same powers at the city of Mexico, on the thirtieth day of December, in the year of our Lord, eighteen hundred and fifty

three, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed.

"SEC. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

"If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby. * * *"

"SEC. 12. That all claims mentioned in section six of this act which are by the provisions of this act authorized to be prosecuted shall, at the end of two years

from the taking effect of this act, if no petition in respect to the same shall have then been filed as hereinbefore provided, be deemed and taken, in all courts and elsewhere, to be abandoned and shall be forever barred: * * *"

"SEC. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

"First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

"Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place." * * *

Act of March 2, 1896 (29 Stat. 42):

"CHAP. 39.—An Act To provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one

of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed; *Provided*, That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry.

"SEC. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject-matter or at his op-

tion, as prescribed in sections three and four of chapter three-hundred and seventy-six of the Acts of the second session of the Forty-ninth Congress.

"SEC. 3. That if at any time prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are bona fide purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no such suit shall be instituted and the title of such claimant or claimants shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land as hereinbefore specified."

Act of March 3, 1897 (29 Stat. 622):

"CHAP. 374.—An Act To define the rights of purchasers under mortgages authorized by an Act of Congress approved April twentieth, eighteen hundred and seventy-one, concerning the Atlantic and Pacific Railroad Company.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever any mortgage made by the Atlantic and Pacific Railroad Company under and by virtue of Acts of Congress is foreclosed in any court of the United States, or of any State or Territory thereof, and any sale of the road, equipment

lands, franchises, privileges, and other rights and property covered by said mortgage is made under a decree or decrees of such courts, the purchaser at any such sale or sales, and their associates or assigns, shall constitute a new company, which shall have and shall be entitled to hold and possess the franchises and property so sold, and to exercise the same rights, powers, privileges, grants, and franchises, including the franchise to be a corporation, granted by the Act of Congress approved July twenty-seventh, eighteen hundred and sixty-six, incorporating the Atlantic and Pacific Railroad Company, and by acts amendatory thereof and supplemental thereto, which were owned and possessed by said Atlantic and Pacific Railroad Company, or said mortgagees at the time of such decree of foreclosure; and the incorporation as hereby provided shall be completed and become effective whenever the said purchasers and their associates or assigns shall file with the Secretary of the Interior a certificate of incorporation hereunder, duly acknowledged, specifying the name of such new corporation, its president, and the names of its directors, the amount of its proposed capital stock and bonds, together with a certified copy of the decree or decrees ratifying such sale; but such new company shall be subject to all the obligations and duties to the United States which said Atlantic and Pacific Railroad Company was subject under its charter or Act of incorporation, and nothing in this Act shall be held to deprive the United States of any right or remedy they may at any time have had against said Atlantic and Pacific Railroad Company; but nothing in this Act shall make such purchasers and their associates or such new corporation liable for any debts or claims or contracts of the old corporation except all debts, demands and liabilities which were due or owing by the old company, which were contracted, accrued, or were incurred or are due or owing for tickets and freight balances, or for wages, work, labor, materials, machinery, fixtures, and supplies of every kind and character, done, performed, or furnished in the repair, equipment, operation, or extension of said road and its branches

so purchased, and all liabilities incurred by said old company in the transportation of freight and passengers thereon, including damages for injuries to employees or other persons, and to property, and which debts, demands and liabilities have accrued or upon which suit had been brought or was pending, or judgment rendered, within twelve months prior to the appointment of a receiver or receivers in the foreclosure proceeding or since the appointment of any such receiver, but such liabilities shall not include any liabilities to other railroad companies except for tickets and freight balances: *Provided*, The capital stock of the corporation herein authorized shall be divided into shares each of the par value of one hundred dollars, and shall not exceed the amount of the mortgage debt due and unpaid at the time of the decree of foreclosure: *Provided*, That additional stock and bonds may be issued by the corporation upon the payment into its treasury therefor the full par value thereof in cash. No stock shall be issued until the Secretary of the Interior shall approve its issue and certify that it is issued in conformity to the provisions of this Act. The total stock issued under the provisions of this Act shall not exceed one hundred million dollars. But no stock shall be issued by said corporation until such issue shall be approved by the Secretary of the Interior as actually representing money, labor or property, estimated at its actual cost value, at the full or par value of said issue of stock: *Provided further*, That nothing herein contained shall be construed as making any additional grant of lands or other franchises to such successor corporation, or as a waiver of any rights of the United States now existing to enforce any forfeiture of lands heretofore granted to the said Atlantic and Pacific Railroad Company, or as in any manner affecting the vested rights of any settler or settlers on any of the lands heretofore granted to the Atlantic and Pacific Railroad Company or of any purchaser or purchasers of said lands from said company: *Provided further*, That as a condition precedent to reorganization the purchasers of the railroad property and their associates shall relinquish

in writing and convey to the United States (by a proper deed or instrument to be filed with and approved by the Secretary of the Interior within six months after the passage of this Act and before this Act shall take effect) all claims, right, title and interest to all lands granted to the Atlantic and Pacific Railroad Company embraced within both the granted and indemnity limits, which were adjacent to and coterminous with the uncompleted portions of the road on the sixth day of July, eighteen hundred and eighty-six: *And provided further*, That in every case of failure of the title to any lands conveyed or contracted to be sold by said Atlantic and Pacific Railroad Company to any bona fide settler and occupant in a tract of six hundred and forty acres or less any and all rights of such purchaser or his assigns, in respect of such land, or in respect of the failure of such title, or in respect to the liability of said Atlantic and Pacific Railroad Company on any such contract, shall survive and may be enforced against such successor company with the same force and effect and in the same manner as against the Atlantic and Pacific Railroad Company; and such successor company, upon making compensation for such loss of title or failure to comply with the conditions of any such land contract, shall be subrogated to the rights of such purchaser in respect of the lands for which such compensation shall have been made: *And provided further*, That in case any uncompleted contracts for the purchase of land shall be pending at the time of such foreclosure sale, such new company shall, upon payment to it of any unpaid balance of purchase money for such land at the time provided in such contracts for the sale thereof, convey and release to the holders of such contracts all its title, interest, and estate in and to the land embraced in such contracts.

"SEC. 2. Where the line of such railway is now located within the limits of any state, or where such line is now located within a territory which may hereafter become a state, such state or such territory, when it shall become a state, shall be empowered to require such corporation to become incorporated with-

in such state or states as may be provided by the laws thereof.

"SEC. 3. That Congress shall at all times have the power to alter, amend, or repeal this Act.

"Approved, March 3, 1897."

Act of June 27, 1902 (32 Stat. 405):

"CHAP. 1159.—An Act Authorizing the Santa Fe Pacific Railroad Company to sell or lease its railroad property and franchises, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Santa Fe Pacific Railroad Company, a corporation incorporated under the Act of Congress approved March third, eighteen hundred and ninety-seven, entitled 'An Act to define the rights of purchasers under mortgages authorized by an Act of Congress approved April twentieth, eighteen hundred and seventy-one, concerning the Atlantic and Pacific Railroad Company,' be, and it hereby is, authorized and empowered to sell or lease its railroad and other property, including all rights, powers, privileges, grants, and franchises, to the Atchison, Topeka and Santa Fe Railway Company, a corporation of the State of Kansas, its successors and assigns; but such purchaser or lessee shall take, hold, and use the railroad and property sold or leased subject to all duties, obligations, conditions, and restrictions relating thereto which at the time of such sale or lease shall be binding upon said Santa Fe Pacific Railroad Company as fully as though such sale or lease had not been made; and thereupon such purchaser or lessee shall have and enjoy all rights, powers, privileges, grants, and franchises relating to said railroad and property, or any part thereof, that were conferred by Congress upon said Santa Fe Pacific Railroad Company: *Provided, however*, That said railroad shall remain as heretofore a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

and subject also to all other rights of the United States.

"SEC. 2. That from and after the passage of this Act the said Santa Fe Pacific Railroad Company, its successors or assigns, shall pay an annual tax at the rate of one hundred and seventy-five dollars per mile to the Territories of New Mexico and Arizona, respectively for each mile of main track in said Territories, respectively, the same to be apportioned among the counties of said Territories in which said railroad is located according to the mileage in each county, respectively, and said taxes shall be in lieu of all other taxes on said property hereby authorized to be leased or sold and the rolling stock used thereon, but excepting the land-grant lands and the shops as hereinafter otherwise provided, and the payment of the said tax as to each Territory shall be made on or before the first day of December of every year after nineteen hundred and two, until it shall have been admitted into the United States of America as a State; and that upon the admission of the said Territories of New Mexico and Arizona, or either of them, as States, the property hereby authorized to be transferred, situated therein, shall be subject to all the laws and regulations of either of the said States of New Mexico or Arizona, in the same manner and to the same extent as any other railroad property situated therein. The payment of the said one hundred and seventy-five dollars a mile shall not extend to or apply to any of the land-grant lands owned by the said Santa Fe Pacific Railroad Company which are in no wise connected with the right of way and station grounds of said company, said land-grant lands to remain as now chargeable with taxes as assessed and collected under and by virtue of the laws of the said Territories of New Mexico and Arizona, and the shops situated at Albuquerque, New Mexico, including the machinery therein, and the lands upon which the same are situated, shall be assessed separately, and the taxes thereon paid annually according to the laws of New Mexico.

"SEC. 3. That the sale or lease herein authorized shall be made on or before January first, nineteen

hundred and four; otherwise this Act shall become inoperative for all purposes.

"SEC. 4. That Congress shall at all times have power to alter, amend, or repeal this Act.

"Approved, June 27, 1902."

Excerpt from the appropriations act of April 21, 1904 (33 Stat. 189, 211):

"That any private land over which an Indian reservation has been extended by Executive order, may be exchanged at the discretion of the Secretary of the Interior and at the expense of the owner thereof and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant, nonmineral nontimbered, surveyed public lands of equal area and value and situated in the same State or Territory."

Excerpts from the act of June 20, 1910 (36 Stat. 557):

"CHAP. 310.—An Act To enable the people of New Mexico to form a constitution and state government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original states. • • •

"SEC. 2. • • •

"And said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State—

"*First.* • • • and that polygamous or plural marriages, or polygamous cohabitation, and the sale, barter, or giving of intoxicating liquors to Indians and the introduction of liquors into Indian country, which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico, are forever prohibited.

"*Second.* That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries

thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; that the lands and other property belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by the State upon lands or property therein belonging to or which may hereafter be acquired by the United States, or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any Act of Congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as Congress has prescribed or may hereafter prescribe."

Article IX, Section 2, Constitution of Arizona:

"SECTION 2. That there shall be exempt from taxation all Federal, State, county and municipal property. Property of educational, charitable and religious associations or institutions not used or held for profit may be exempt from taxation by law. Public debt, as evidenced by the bonds of Arizona, its counties, municipalities, or other subdivisions, shall also be exempt from taxation. There shall be further exempt from taxation the property of widows, honorably discharged soldiers, sailors, United States Marines, members of revenue marine service, and army nurses, residents of this state, not exceeding the amount of two thousand dollars, where the total assessment of such widow and such other persons named herein does not

exceed five thousand dollars; provided, that no such exemption shall be made for such persons other than widows unless they shall have served at least sixty days in the military or naval service of the United States during time of war, and shall have been residents of this State prior to January 1, 1927. All property in the State not exempt under the laws of the United States or under this constitution, or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law. This section shall be self-executing."

Excerpt from Article XX, Arizona Constitution:

"The following ordinance shall be irrevocable without the consent of the United States and the people of this State: * * *

"Third. The sale, barter, or giving of intoxicating liquors to Indians and the introduction of liquors into Indian country are forever prohibited within this State.

"Fourth. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States."

Act of June 25, 1910 (36 Stat. 834):

"CHAP. 406.—An Act Making an appropriation for the survey of public lands lying within the limits of land grants, to provide for the forfeiture to the United States of unsurveyed land grants to railroads, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the Secretary of the Interior to complete the adjustment of land grants made by

Congress to aid in the construction of railroads, and to subject the lands granted to taxation by States, Territories, and municipal authorities, any railroad corporation required by law to pay the costs of surveying, selecting, or conveying any lands granted to such company or corporation, or for its use and benefit, by any Act of Congress, shall be, and is hereby, required, within ninety days from demand by the Secretary of the Interior, to deposit in a proper United States depository to the credit of the United States a sum sufficient to pay the cost of surveying, selecting, and conveying any of the unsurveyed lands granted to such company, or for its use and benefit, under any act of Congress: *Provided, further*, That the Secretary of the Interior shall determine and specify in the notice or demand to such company the amount of the required deposit, and may, in his discretion, demand a sum sufficient to cover the cost of the survey, selection, and conveyance of the entire area granted to any company, or for its use and benefit, then unsurveyed, or for such townships or fractional townships as he may prescribe and designate in the notice or demand to such company, as aforesaid: *And provided further*, That the amount deposited shall, subject to the rules and regulations of the Department of the Interior, under the direction of the Commissioner of the General Land Office, be disbursed for the surveying, including office and field work, selection, and conveyance of the lands granted and designated in the notice of the Secretary of the Interior, as aforesaid: *And provided further*, That in the event the money deposited by any railroad corporation under the provisions of this act shall exceed the cost of said surveys, the said excess thereof shall be repaid to the corporations so depositing the same, or to its assigns.

"SEC. 2. That if any railroad corporation required by law to pay the costs of surveying, selecting, or conveying any lands granted to such corporation, or for its use and benefit, by any Act of Congress, shall, for ninety days from notice or demand by the Secretary of the Interior, as provided in this Act, neglect or refuse to deposit an amount sufficient to meet the expense of surveying, selecting, and conveying the unsurveyed lands

granted to such company, or for its use and benefit, by any Act of Congress, and designated in the notice or demand by the Secretary of the Interior, as aforesaid, the rights, title, and interests of such company, and all those claiming by, through, or under it, in and to the unsurveyed lands designated in the notice of the Secretary, as aforesaid, shall cease and forfeit to the United States; and the Secretary of the Interior shall notify the Attorney-General, who shall at once commence proceedings to declare the forfeiture and to restore the lands forfeited to the public domain.

"SEC. 3. That this Act shall not affect the right of the Secretary of the Interior to cause the public surveys to be extended over any lands granted to any railroad or corporation by any Act of Congress in the manner now otherwise provided by law, nor shall any claim, right, interest, or demand of the Government of the United States be waived or annulled by the provisions hereof: *Provided*, That all granted lands surveyed under the provisions of this Act shall be subject to taxation by States, Territories, and municipal authorities, and the right of the Government to reimburse itself for the survey, selection, and conveyance of such lands otherwise provided by law shall remain in full force and effect.

"SEC. 4. That the Secretary of the Interior shall prescribe such rules and regulations as will be necessary to the carrying out of the foregoing provisions.

"Approved, June 25, 1910."

Act of March 4, 1913 (37 Stat. 1007):

"CHAP. 153.—An Act For the relief of Indians occupying railroad lands in Arizona, New Mexico, or California.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and he is hereby, authorized in his discretion to request of the present claimant under any railroad land grant a relinquishment or reconveyance of any lands situated within the States of Arizona, New Mexico, or California passing under the grant which are shown to

have been occupied for five years or more by an Indian entitled to receive the tract in allotment under existing law but for the grant to the railroad company, and upon the execution and filing of such relinquishment or reconveyance the lands shall thereupon become available for allotment, and the company relinquishing or reconveying shall be entitled to select within a period of three years after the approval of this Act and have patented to it other vacant nonmineral, nontimbered, surveyed public lands of equal area and value situated in the same State, as may be agreed upon by the Secretary of the Interior, provided that the total area of land that may be exchanged under the provisions of this Act shall not exceed three thousand acres in Arizona, sixteen thousand acres in New Mexico, and five thousand acres in California.

"Approved, March 4, 1913."

Excerpt from the appropriation act of June 30, 1913 (38 Stat. 77-78):

"For the survey, resurvey, classification, appraisement, and allotment of lands in severalty under the provisions of the Act of February eighth, eighteen hundred and eighty-seven, entitled 'An Act to provide for the allotment of lands in severalty to Indians,' and under any other Act or Acts providing for the survey and allotment of lands in severalty to Indians; and for the survey and subdivision of Indian reservations and lands to be allotted to Indians under authority of law, $200,000, to be repaid proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purpose and to remain available until expended; *Provided*, That no part of said sum shall be used for survey, resurvey, classification, appraisement, or allotment of any land in severalty upon the public domain to any Indian, whether of the Navajo or other tribes, within the State of New Mexico and the State of Arizona."

Excerpt from the appropriation act of May 25, 1918 (40 Stat. 561, at 570):

"That hereafter no Indian reservation shall be

created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress." (Sec. 211, Title 25, U. S. C. A.)

Act of August 24, 1922 (42 Stat. 829):

"CHAP. 285.—An Act To Permit adjustment of conflicting claims to certain lands in Mohave County, Arizona.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and he is hereby, authorized and empowered, in his discretion, to accept a relinquishment from the owners of the odd-numbered sections of land falling within townships sixteen, sixteen and one-half, and seventeen north of range thirteen west, Arizona, and permit said owners to select and receive in exchange therefor patents of an equal area of vacant surveyed, nonmineral, nontimbered public land of the United States in the county of Mohave, State of Arizona.

"Approved, August 24, 1922."

Act of February 20, 1925 (43 Stat. 954):

"CHAP. 273.—An Act To provide for exchanges of Government and privately owned lands in the Walapai Indian Reservation, Arizona.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior is hereby authorized, in his discretion, under rules and regulations to be prescribed by him, to accept reconveyances to the Government of privately owned and State school lands and relinquishments of any valid filings, under the homestead laws, or of other valid claims within the Walapai Indian Reservation in Mohave and Coconino Counties, Arizona, and to permit lieu selections within the boundaries of the said reservation by those surrendering their rights so that the lands retained for Indian purposes may be consolidated and held in a solid area so far as may be possible: *Provided*, That the title or claim of any person or company who

refuses to reconvey to the Government shall not be hereby affected.

"Approved, February 20, 1925."

Excerpts from the Taylor Grazing Act (48 Stat. 1269, 49 Stat. 1976), Title 43, U. S. C. A., Section 315 *et seq.*:

**"Sec. 315. Grazing districts; establishment; restrictions; prior rights; rights of way; hearing and notice; hunting or fishing rights**

"In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, not exceeding in the aggregate an area of one hundred and forty-two million acres of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: *Provided*, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this chapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this chapter, nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this chapter, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this chapter, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access

by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this chapter nor sections 291 to 301 of this title, commonly known as the 'Stock Raising Homestead Act,' shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 471 of Title 16, for the purposes set forth in section 475 of Title 16, or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: *Provided, however*, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry of settlement. Nothing in this chapter shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district. (June 28, 1934, c. 865, § 1, 48 Stat. 1269, as amended June 26, 1936, c. 842, Title I, § 1, 49 Stat. 1976.)

**"Sec. 315a. Protection, administration, regulation and improvement of districts; rules and regulations; study of erosion and flood control; offenses**

"The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of the foregoing section, and he shall make such rules and regulations and establish such service, enter into such cooperative agreements, and do any and all things necessary to accom-

plish the purposes of this chapter and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this chapter, through such funds as may be made available for that purpose, and any willful violation of the provisions of this chapter or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500. (June 28, 1934, c. 865, § 2, 48 Stat. 1270.)

**"Sec. 315b. Grazing permits; fees; vested water rights; permits not to create right in land**

"That the Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time: *Provided*, That grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights, owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations

laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is hereby authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: *Provided further*, That nothing in this chapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this chapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this chapter shall not create any right, title, interest, or estate in or to the lands. (June 28, 1934, c. 865, § 3, 48 Stat. 1270.)"

* * *

"**Sec. 315f. Homestead entry within district or withdrawn lands; classification; preferences**

"The Secretary of the Interior is hereby authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and

forage plants, or more valuable or suitable for any other use than for the use provided for under this chapter, or proper for acquisition in satisfaction of any outstanding lieu, exchange or script rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws, except that homestead entries shall not be allowed for tracts exceeding three hundred and twenty acres in area. Such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry: Provided, That locations and entries under the mining laws sections 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of Title 30, may be made upon such withdrawn and reserved areas without regard to classification and without restrictions or limitation by any provision of this chapter. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of the Interior to any grazing permittee of such lands. The applicant, after his entry, selection, or location is allowed, shall be entitled to the possession and use of such lands: Provided, That upon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the Secretary of the Interior, shall entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided. (June 28, 1934, c. 865, § 7, 48 Stat. 1272 as amended June 26, 1936, c. 842, Title I, § 2, 49 Stat. 1976.)"

• • •

**"Sec. 315i. Disposition of moneys received; availability for improvements**

"Except as provided in sections 315h and 315j of this title, all moneys received under the authority of this chapter shall be deposited in the Treasury of the United States as miscellaneous receipts, but 25 per centum of all moneys received under this chapter during any fiscal year is hereby made available, when ap-

propriated by the Congress, for expenditure by the Secretary of the Interior for the construction, purchase, or maintenance of range improvements, and 50 per centum of the money received under this chapter during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the grazing districts or the lands producing such moneys are situated, to be expended as the State Legislature of such State may prescribe for the benefit of the county or counties in which the grazing districts or the lands producing such moneys are situated: Provided, That if any grazing district or any leased tract is in more than one State or county, the distributive share to each from the proceeds of said district or leased tract shall be proportional to its area in said district or leased tract. (June 28, 1934, c. 865, § 10, 48 Stat. 1273, as amended June 26, 1936, c. 842, Title I, § 4, 49 Stat. 1978.)

**"Sec. 315j. Appropriation of moneys received; application of public land laws to Indian ceded lands; application for mineral title to lands**

"When appropriated by Congress, 25 per centum of all moneys received from each grazing district on Indian lands ceded to the United States for disposition under the public-land laws during any fiscal year is hereby made available for expenditure by the Secretary of the Interior for the construction, purchase, or maintenance of range improvements; and an additional 25 per centum of the money received from grazing during each fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which said lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated. And the remaining 50 per centum of all money received from such grazing lands shall be deposited to the credit of the Indians pending final disposition under applicable laws, treaties, or agreements. The applicable public land laws as to said Indian ceded lands within a district created under this chapter shall continue in operation, except that each and every application for nonmineral title to said lands in a district created under this chapter shall be al-

lowed only if in the opinion of the Secretary of the Interior the land is of the character suited to disposal through the chapter under which application is made and such entry and disposal will not affect adversely the best public interest, but no settlement or occupation of such lands shall be permitted until ninety days after allowance of an application. (June 28, 1934, c. 865, § 11, 48 Stat. 1273.)"

Excerpt from the appropriation act of May 9, 1935 (49 Stat. 176, at 183):

"* * * *Provided*, That within the States of Arizona and Wyoming no part of said sum shall be used for the acquisition of lands outside of the boundaries of existing Indian reservations."

## PART III.

### Typical Examples of Statutes Affecting Territories Not Acquired From Mexico.

An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio (see 1 Stat. 51, footnote) provided, in Article III of the Articles of Compact:

"Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."

Excerpts from Act of March 2, 1861 (12 Stat. 239):

"CHAP. LXXXVI.—*An Act to provide a temporary Government for the Territory of Dakota, and to create the Office of Surveyor General therein.*

"* * * *Provided*, That nothing in this act contained

shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Dakota, until said tribe shall signify their assent to the President of the United States to be included within the said Territory, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed: * * *."

Excerpts from Act of August 14, 1848 (9 Stat. 323):

"CHAP. CLXXVII.—*An Act to establish the Territorial Government of Oregon.* * * *

"SEC. 14. *And be it further enacted,* That the inhabitants of said Territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States north-west of the River Ohio, by the articles of compact contained in the ordinance for the government of said territory, on the thirteenth day of July, seventeen hundred and eighty-seven; and shall be subject to all the conditions, and restrictions, and prohibitions in said articles of compact imposed upon the people of said territory; * * *."

## PART IV.

## Proceedings Under the Transportation Act of 1940.

(Public—No. 785—76th Congress)
(Chapter 722—3d Session)
(S. 2009)

AN ACT.

To amend the Act to regulate commerce, approved February 4, 1887, as amended, so as to provide for unified regulation of carriers by railroad, motor vehicle, and water, and for other purposes.

* * *

TITLE III—MISCELLANEOUS.

Part II—Rates on Government Traffic.

SEC. 321. (a) * * *

(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an

innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

Approved, September 18, 1940.

RELEASE.

Santa Fe Pacific Railroad Company, a corporation organized and existing by virtue of an Act of Congress approved March 3, 1897 (29 Stat. 622), with office and principal place of business at New York, in the State of New York, hereby, in accordance with section 321 of Part II of Title III of the Transportation Act of 1940, and the rules and regulations issued thereunder by the Secretary of the Interior, relinquishes, remises and quitclaims to the United States of America any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted, or claimed should have been granted by any act of the Congress to Santa Fe Pacific Railroad Company or to any predecessor in interest in aid of the construction of any portion of its railroad.

This release does not embrace the rights of way or station grounds of this company, lands sold by the company to innocent purchasers for value prior to September 18, 1940, lands embraced in selections made by the company and approved by the Secretary of the Interior prior to September 18, 1940, or lands which have been patented or certified to the company or any predecessor in interest in aid of the construction of its railroad.

IN WITNESS WHEREOF, Santa Fe Pacific Railroad Company has caused this Release to be signed in its corporate name and acknowledged or proved by its President and its corporate seal to be hereunto affixed and the same to be attested by the signature of its Secretary, this 17th day of December, 1940.

SANTA FE PACIFIC RAILROAD COMPANY,
By (Sgd) E. J. ENGEL,
*Its President.*

(Seal)

Attest:
(Sgd) R. M. HOGIN,
*Its Secretary.*

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

On this 17th day of December, 1940, before me, the undersigned George Julius Howard a notary public within and for the county aforesaid, appeared E. J. Engel and R. M. Hogin, to me personally known, who, being by me severally and duly sworn, did say that he, the said E. J. Engel, is the President, and he, the said R. M. Hogin, is the Secretary, of Santa Fe Pacific Railroad Company, the corporation which executed the foregoing instrument, and that the seal affixed thereto is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said E. J. Engel, as President as aforesaid, and the said R. M. Hogin, as Secretary as aforesaid, acknowledged before me the said instrument to be the free act and deed of said corporation, and acknowledged that they, as President and Secretary respectively, executed the said instrument on behalf of said corporation for the purpose and consideration therein expressed.

WITNESS my hand and notarial seal this 17 day of December, 1940.

(Signed) GEORGE JULIUS HOWARD,
*Notary Public.*

My commission expires March 30, 1941.

LAND DIVISION.

Jan. 4, 1941

*Hon. Fred A. Johnson,*
*Commissioner of the General Land Office.*

MY DEAR MR. JOHNSON:

This will refer to the releases of land grant claims filed by the Atchison, Topeka and Santa Fe Railway Company and the Santa Fe Pacific Railroad Company, pursuant to the Act of September 18, 1940 (Public No. 785—76th Congress), and the regulations prescribed thereunder.

The statute provides that if a land grant railroad desires to receive the benefit of the Act, it is required to file with the Secretary of the Interior in the form and manner prescribed by him, a release of any claim it may have to lands, interests in lands, compensation or reimbursement on account of lands or interests in lands so granted, claimed to have been granted or claimed should have been granted. The Act does not require the reconveyance of land already patented or certified or prevent the issuance of patents for land listed or selected where the listing or selection was fully and finally approved by the Secretary of the Interior prior to September 18, 1940, to the extent that the issuance of such patents may be authorized by law.

The odd numbered sections of land within the Walapai Indian Reservation, Arizona, are unpatented and are not within the exceptions to the aforesaid Act, but said sections are claimed by the Santa Fe Pacific Railroad Company, which claim is now being contested by the United States in the Courts. The Act does require the Railroad to release its claim to such sections if it intends to receive the benefits of said Act.

It is assumed by this Office that the releases submitted do cover the odd numbered sections of land within the

Walapai Indian Reservation. Otherwise there would appear to be an evasion of compliance with the specific language contained in the Act. Therefore, to avoid any controversy in the future as to whether the releases cover the odd numbered sections of land in the Walapai Indian Reservation, it is requested that any official action by your office, relative to accepting the releases, be held in abeyance and that the Companies be required to indicate formally, in writing, that the odd numbered sections of land within the Walapai Indian Reservation are covered by the releases tendered.

Sincerely yours,

(Signed) JOHN COLLIER,

*Commissioner.*

JMS:ds

1-3-41

cc: Mr. Lawrence Cake,
Local Representative Santa Fe
Pacific Railroad Company,
Woodward Building,
Washington, D. C.

LAWRENCE CAKE
Attorney and Counsellor at Law
Woodward Building
Washington, D. C.

January 6, 1941.

*The Commissioner of the General Land Office,*
*Washington, D. C.*

SIR:

Referring to informal conference with Mr. Havell regarding the release of land-grant claims filed by the Santa Fe Pacific Railroad Company in accordance with Section 321, Part II, Title III of the Transportation Act of 1940 and the regulations thereunder promulgated in Circular No. 1480, and to letter dated January 4, 1941 from the Commissioner of Indian Affairs regarding the attitude of the company toward the unpatented odd-numbered sections within the Walapai Indian Reservation, I have to advise that I have communicated with the company and have been informed that the lands in question within the Walapai Reservation are intended to be and are included in the release which has been filed. I was given this assurance by telephone on Saturday and later I received the enclosed telegram from Charles H. Woods, General Solicitor, Santa Fe Pacific Railroad Company.

Respectfully,
(Signed) LAWRENCE CAKE.

Enc:

UNITED STATES DEPARTMENT OF THE INTERIOR.
Office of the Secretary,
Washington.

Jan. 15, 1941.

*Charles H. Woods, Esquire,*
*General Solicitor,*
*The Atchison, Topeka and Santa Fe Railway System,*
*1211 Railway Exchange*
*Chicago, Illinois.*

MY DEAR MR. WOODS:

On December 18, you, together with Lawrence Cake, Esquire, filed releases of land grant claims executed on December 17 by the Atchison, Topeka and Santa Fe Railway Company and the Santa Fe Pacific Railroad Company under Section 321(b), Part II, Title III, Transportation Act of 1940, and Circular No. 1480, the regulations governing such releases. The Santa Fe Pacific Railroad Company owns the land grant involved, and the Railway Company *supra* operates the line of railroad and owns the Railroad Company. The land grant has not been adjusted and closed.

The Railroad Company has filed a list containing the names of all innocent purchasers of unpatented lands prior to September 18 together with a description of such lands. Section 273.65(c). The Land Commissioner of the company made affidavit on December 12 that other than the lands in the above list no unpatented grant lands have been sold or are otherwise encumbered.

Where a grant has not been finally adjusted and closed, the release must be recorded in each county where the released lands or interests are situated. Section 273.65(d), Circular No. 1480. Also, the release should be supported by certificates from the county officers to the effect that there are no tax or mortgage liens or other encumbrances

of record affecting any of the lands reconveyed to the United States. Section 273.65(e), Circular No. 1480.

The release of the Santa Fe Pacific Railroad Company is enclosed herewith in order that it may be recorded in conformity with Section 273.65(d), Circular No. 1480.

For the purpose of the record it is requested that the companies file in this Department a document executed and acknowledged by an authorized officer or officers of the companies, acknowledging and certifying that the releases heretofore submitted are intended by the companies to, and do, relinquish and quit claim to the United States of America, among other lands, all unpatented lands of the companies, or claimed by the companies under the act of July 27, 1866 (14 Stat. 292), within the Walapai Indian Reservation in Arizona, and which are included in the case of *United States* v. *Santa Fe Pacific Railroad Company*, pending in the Federal Courts.

Upon the return hereof, with evidence of recordation and the evidence required by Section 273.65(e), and the preceding paragraph hereof, the matter of the approval of the release will be given prompt consideration.

Sincerely yours,

(Sgd) Oscar L. Chapman,
*Assistant Secretary.*

Enclosure 59772.

INDENTURE OF FURTHER ASSURANCE.

INDENTURE of further assurance made this 23d day of January, 1941, by SANTA FE PACIFIC RAILROAD COMPANY, a corporation organized and existing under and by virtue of an act of Congress approved March 3, 1897, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of Kansas (hereinafter sometimes collectively called Companies).

WHEREAS, Companies did on the 18th day of December, 1940, file with the Secretary of the Interior of the United States of America releases of land grant claims executed by them, respectively, on the 17th day of December, 1940, under Section 321(b), Part II, Title III, of the Transportation Act of 1940, and Circular No. 1480, the regulations governing such releases, and

WHEREAS, said Secretary of the Interior, by letter of Oscar L. Chapman, Assistant Secretary, dated January 15, 1941, has requested Companies to execute and acknowledge by an authorized officer or officers an instrument acknowledging and certifying that the releases heretofore submitted were intended by Companies to, and do, relinquish and quitclaim to the United States of America, among other lands, all unpatented lands of Companies, or claimed by Companies under the act of July 27, 1866 (14 Stat. 292), within the Walapai Indian Reservation in Arizona, and which are included in the case of *United States* v. *Santa Fe Pacific Railroad Company* (114 Fed. (2d) 420), pending in the Federal Courts:

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of the premises and for the purpose of further complying with said Section 321 (b), Part II, Title III, of the Transportation Act of 1940, and Cir-

cular No. 1480, SANTA FE PACIFIC RAILROAD COMPANY and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY do each hereby acknowledge and certify that the said releases filed with the Secretary of the Interior of the United States of America on December 18, 1940, were intended to, and do relinquish and quitclaim to the United States of America, among other lands, all unpatented lands of Companies, or claimed by Companies under the act of July 27, 1866 (14 Stat. 292), within the Walapai Indian Reservation in Arizona, and which are included in the case of *United States* v. *Santa Fe Pacific Railroad Company* (114 Fed. (2d) 420), pending in the Federal Courts.

IN WITNESS WHEREOF each of the said Companies has caused these presents to be executed in quadruplicate by its officers thereunto duly authorized, its corporate seal to be hereunto affixed and attested by its Assistant Secretary this 23rd day of January, 1941.

SANTA FE PACIFIC RAILROAD COMPANY,
By (Sgd.) E. J. ENGEL,
(SEAL) *President.*

Attest:
(Sgd.) G. L. GARVER,
*Assistant Secretary.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By (Sgd.) E. J. ENGEL,
(SEAL) *President.*

Attest:
(Sgd.) G. L. GARVER,
*Assistant Secretary.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

On this 23rd day of January, 1941, before me, the undersigned Oscar M. Carlson, a notary public within and for the county aforesaid, appeared E. J. Engel and G. L. Garver, to me personally known, who, being by me severally and duly sworn, did say that he, the said E. J. Engel, is the President, and he, the said G. L. Garver, is the Assistant Secretary, of Santa Fe Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, the corporations which executed the foregoing instrument, and that the seals affixed thereto are the corporate seals of said corporations, and that the said instrument was signed and sealed in behalf of said corporations by authority of their Boards of Directors; and the said E. J. Engel, as President as aforesaid, and the said G. L. Garver, as Assistant Secretary as aforesaid, acknowledged before me the said instrument to be the free act and deed of said corporations, and acknowledged that they, as President and Secretary respectively, executed the said instrument on behalf of said corporations for the purposes and consideration therein expressed.

Witness my hand and notarial seal this 23rd day of January, 1941.

(Sgd.) OSCAR M. CARLSON,
*Notary Public.*

My commission expires October 28, 1942.

In reply refer to 1821166 "F"

Address only the
Commissioner of
the General Land Office

UNITED STATES DEPARTMENT OF THE INTERIOR
General Land Office
Washington

Feb. 25, 1941

*The Secretary of the Interior,*

SIR:

On December 18, 1940, The Atchison, Topeka and Santa Fe Railway Company and the Santa Fe Pacific Railroad Company filed releases of land grant claims executed on December 17, 1940, under Section 321b, Part II, Title III, of the Transportation Act of 1940, and the regulations of October 10, 1940, Circular No. 1480, governing such releases, accompanied by a list of the unpatented lands sold to innocent purchasers for value, as prescribed by Section 273.65(c), Circular No. 1480, and an affidavit by the Land Commissioner of the companies that, other than these sales, there are no encumbrances or liens.

The land grant was made to the Atlantic and Pacific Railroad Company. The line of railroad extends from Isleta, New Mexico, to the Colorado River, in Arizona, in the vicinity of Needles, California. The railroad is now owned and operated by The Atchison, Topeka and Santa Fe Railway Company. The successor to the land grant is the Santa Fe Pacific Railroad Company. Evidence of the successorship, and of the authority for the execution of the releases is with the record.

On January 27, 1941, the companies filed a bond to indemnify for tax liens against the lands surrendered.

Evidence showing that the release by the Santa Fe Pacific Railroad Company has been recorded in the counties

where the surrendered lands lie was filed on February 17, 1941, accompanied by certificates of the County Clerks that no encumbrances or liens are of record and certificates by the County Treasurers that all taxes which have been assessed or which could operate as a lien have been paid.

The releases conform to the law and the regulations, and I recommend that they be approved. The approval of this letter constitutes the approval of the releases.

Very respectfully,

(Sgd.) FRED W. JOHNSON,
*Commissioner.*

Approved: Mar. 1, 1941.

(Sgd.) OSCAR L. CHAPMAN,
*Assistant Secretary.*

## PART V.

A RECITATION OF THE DETAILED LEGISLATIVE AND ADMINISTRATIVE HISTORY BOTH PRIOR AND SUBSEQUENT TO THE GRANT ACT OF 1866.

*A. Conclusively Showing a Clear Intent on the Part of Congress Negativing the Existence of Any Grants to or the Recognition of Any Rights in the Walapai Bands of Indians Based Solely Upon Possession.*

1. The cession of territory following the successful termination of the Mexican War finds expression in the Treaty of Guadalupe Hidalgo (1848, 9 Stat. 922). Excerpts from this treaty are set forth at pages 3-6, *supra*. The last paragraph of the second section of the protocol, page 5, reads:

> "Conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May, 1846, * * *"

2. Kearney's Law of 1847, adopted as a part of the New Mexican laws of 1852, is set forth at pp. 8-9, *supra*.

3. In 1850 Congress sent William Carey Jones to ascertain what private rights existed which the United States was bound to respect, and what lands belonged to the United States subject to its disposal. He reported that in the wild and wandering tribes the Spanish-Mexican law recognized no right. Senate Document 18, 31st Cong., 2nd Sess., Vol. 3, 1850-51, p. 34.

4. By act of September 9, 1850, the Territory of New Mexico, including the physical boundaries of Arizona, was created. This act, excerpts from which appear at pages 9-12, *supra*, created a full territorial government covering all rightful subjects of legislation but prohibited the pass-

ing of any law interfering with the primary disposal of the soil, and prohibited taxation of the property of the United States.

5. March 3, 1851, Congress passed an act to ascertain and settle the private land claims in the State of California (p. 12, *supra*). This act, while limited to the territory embraced within California, is mentioned because in the first place it covers similar territory ceded from Mexico and because Congress evinced a similar policy later on with respect to Arizona and New Mexico.

6. In 1852 the Senate of the United States rejected eighteen treaties which had been entered into with various Indian tribes in California. These treaties recognized and created possessory rights in California tribes to the lands used and possessed, to the exclusion of other tribes. The rejection of these treaties by the Senate was because these Indians had no rights to the soil and the Senate did not desire to create any. See Report of Commissioner of Indian Affairs, 1869, pp. 457-8, 460-61; R. 35.

7. By act of March 3, 1853 (p. 18, *supra*), Congress extended the preemption laws of the United States over the alternate reserved sections of public lands along the lines of all the railroads in the United States, wherever public lands have been or may be granted by acts of Congress, providing that the price to be paid shall in all cases be $2.50 per acre.

8. July 22, 1854, Congress passed an act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes. This act is set forth at pages 19-24, *supra*, and, in brief, donated a quarter section to every citizen residing in those territories prior to January 1, 1853, and to citizens becoming residents prior to January 1, 1858, providing that on proof of settlement and cultivation to the satisfaction of the Surveyor-Gen-

eral, and subject to the supervision of the Secretary of the Interior, a certificate should be issued, followed by patent. Section 4 (p. 21, *supra*) provided that none of the provisions of the act should be extended to school lands, salines, military or other reservations, or lands settled on and occupied for purposes of trade and commerce, and not for agriculture, such latter purposes being governed by the townsite law of 1844.

Section 5 provided that sections numbered 16 and 36 were reserved for schools, and Section 6 provided for two townships for a university. Section 7 provided that any lands not taken under any of the previous sections should be subject to the operation of the preemption act of September 4, 1841, whether settled upon before or after the survey. Section 8 (p. 22, *supra*) had for its purpose the same object as the California act of 1851, mentioned in paragraph 5, *supra*.

Sections 10 to 13, inclusive, made provisions for the appointment of a Surveyor-General for the territories of Nebraska and Kansas. Section 12 provided that all the lands to which the Indian title has been or shall be extinguished within said Territories and Nebraska and Kansas (note here the omission of New Mexico), shall be subject to the operations of the Preemption Act of September 4, 1841. Section 13 provides that the public lands in the territories of Nebraska and Kansas to which the Indian title shall have been extinguished (note here again the omission of New Mexico) shall constitute new land districts.

9. The Commissioner of the General Land Office, with the approval of the Secretary of the Interior, instructed the Surveyor-General of New Mexico on August 21, 1854, with reference to his duties under the act of 1854, as follows:

> "It is obligatory on the Government of the United States to deal with the private land titles, and the

'pueblos,' precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done—to go that far, and no further. This is the principle which you will bear in mind in acting upon these important concerns."—Donaldson, *The Public Domain*, p. 398.

10. Onward from 1854, the date of the act to establish the office of Surveyor-General, all of the Territory of New Mexico (including that of Arizona) not covered by Spanish or Mexican grants was subject to grant and sale by the United States. *Newhall* v. *Sanger*, 92 U. S. 761; *Lockhart* v. *Johnson*, 181 U. S. 516.

11. In 1857, Captain Sylvester Mowry was sent out to ascertain and report what private titles were to be respected and what lands were public and open to disposition by Congress in the Gadsden Purchase. He made report that under Spanish and Mexican law "the country occupied by the wild tribes was expressly declared to be public domain." (Report of the Commissioner of Indian Affairs, 1857, pp. 584-593, R. 33-34, R. 34-35.)

12. In 1860, the President transmitted to Congress reports of the Secretary of the Interior and Commissioner of the General Land Office showing that Indians in California had no soil rights, that there were no treaties with Arizona and California tribes, and that with respect to them the Government was free to pursue any policy which circumstances might render expedient. (S. Exec. Doc. 1, 36th Cong., 2nd Sess., pp. 34-6, 51, R. 34-35.)

13. In 1863, the Senate amended the treaty with the Taberguache band of Utes to indicate the purpose of the Government not to recognize any rights in the Indians, or to create any outside of reservations, but to Americanize the whole territory. This purpose was subsequently noted by the Court of Claims in *Hayt* v. *United States*, 38 Ct. Cl. 455, also by Kappler in the fourth volume of his monumental work on Indian Affairs, published in 1929 as Senate

Document 53, 70th Congress, 1st Session, pages 1170-71. (R. 34.)

14. In 1863, Arizona was created as a separate Territory. The laws of New Mexico were carried forward. (pp. 24-26, *supra.*)

15. In 1864, Arizona's first Superintendent of Indian Affairs, Charles D. Poston, agreed with the Chiefs of the Walapai and certain other Indians that he would try to have a reservation set aside for them at Half Way Bend on the Lower Colorado, and they agreed to accept. (R. 130.) His activities were paid for by appropriations (R. 54), which indicated a Congressional intent to force the Indians to abandon their nomadic life, become sedentary, and to desist from further obstructions of White settlements.

In 1865, Mr. Poston, then Territorial Representative to Congress, and speaking on the appropriation bill which created the Lower Colorado River Reservation as a reservation for the Indians of the Colorado and its tributaries, fully explained the meeting of the Walapai Chiefs and others, stating no treaty was made because he knew the Senate would reject it, having in mind the California Indian treaties, further stating that the Indians were not recognized as having any soil right, and urging that every motive of humanity required the creation of the reservation. (R. 130.)

16. In 1865, Congress created the Colorado River Reservation. 13 Stat. 559; p. 26, *supra.* As shown by Superintendent Leihy's report of 1866, set forth in the Report of the Commissioner of Indian Affairs for that year, House Executive Document 1, 39th Congress, 2d Session, p. 27, the Walapai were noted as coming within the jurisdiction of this reservation. Until about 1880, the Walapai are shown in the reports of the Commissioner of Indian Affairs to belong to [illegible]'s reservation. (R. 52.)

17. Long prior to 1866, settlers and miners had been

coming into this territory. See Report of Commissioner of the General Land Office for 1866, p. 371. Surveying was commenced in 1866 to accommodate these settlers and thereafter steadily progressed. The Report of the Commissioner of the General Land Office for 1869 shows that all of Arizona, with the exception of the reservation, was regarded as public domain, open to grant by Congress, and for the year ended June 30, 1873, the Commissioner of the General Land Office reported the survey of Townships 20 N. Range 22 W., 23 N. 18 W., 18 N. 5 W., and 18 N. 6 W., all included in the second cause of action. The material set forth in the Transcript of Record, pp. 41-53 shows that from the earliest time to the present, by reports transmitted by the President to Congress annually, and by appropriations by Congress for surveys, the whole country since 1854 was subject to the land laws and that the Indians never had conflicting rights.

18. The Prescott Land Office was established November 3, 1868. (R. 40.) See Donaldson, *The Public Domain*, p. 173. The Gila Land District was created February 18, 1873. Appropriations were made for the survey of public lands in Arizona in 1865, 1867, 1868, 1869, and 1870. See the latter act, p. 41, *supra*.

19. In 1866, Congress passed the granting act (p. 27, *supra*), and granted the lands here in issue, with others, to the Atlantic & Pacific Railroad Company to obtain a military and postal route to the Pacific, expedite settlement, etc.

20. In 1866-69, the Walapai and the military were at war. The Walapai were finally subdued and required to leave the settlers at peace. This war delayed the removal of the Walapai to their Lower Colorado River Reservation and also the settlement and development of the territory. (See Walapai Papers, 41-84.)

21. In 1869-74, the Walapai were kept under close military surveillance. Bancroft, *History of Arizona and New*

*Mexico*, pp. 561-3; 9 *New Mexico Historical Review*, pp. 174-5, 181.

22. In 1869, President Grant announced that all Indians would thenceforth be dealt with only as wards.

23. In 1870, the Surveyor General was directed by Congress to ascertain and report on the lands owned under the laws, customs, and usages of Spain and Mexico, exempted from grant and sale under the law of 1854. 16 Stat. 291, 304, p. 41, *supra*.

24. In 1871, Congress forbade further dealing with any Indians by treaty. 16 Stat. 543, 566, p. 41, *supra*.

25. In 1871, Vincent Colyer was sent out by the President with full powers to deal with the Indians. He ordered the Walapai fed at Beale Springs until it could be ascertained where they could be placed without interfering with White exploitation of mineral resources. (R. 54.)

26. In 1872 the Beale Springs feeding post was disestablished by order of General Howard. All Indians in Arizona were ordered to go on their reservation by February or to take the consequences. (See *New Merico Historical Review* and Bancroft, cited under 21.)

27. During the years 1868 to 1883, inclusive, the President transmitted reports to Congress which show (1) the Indians of Arizona were not treated as having soil rights, but as pensioners on the national bounty who were required to remain on the reservations assigned to them; (2) that the whole territory outside the Spanish-Mexican grants and the reservations was open to sale and grant; and (3) that the coming of the railroad was eagerly awaited as bringing deliverance from Indian hostility, and a rapid exploitation of the country by White settlers. (R. 41-53.)

28. The Atlantic and Pacific filed its map of definite location March 12, 1872; and the Commissioner of the General Land Office, on May 17, 1872, ordered all the odd-num-

bered sections involved in the litigation withdrawn from settlement and entry.

29. In 1874, April, the Walapai were escorted to their Reservation. There they remained until they ran away a year later. (R. 54.)

30. June 22, 1874, Congress passed an act for the relief of settlers on railroad lands. The text of this act (18 Stat. 194) is set forth at pages 42-3, *supra*.

31. 1882. The report of the Public Lands Commission, compiled by Donaldson, subsequently published in 1884 by Congress, shows that all territory acquired from Mexico had been open to settlement under the public land laws; that all of Arizona had been subject to disposition by Congress since acquired. Donaldson, *The Public Domain*, 14-15.

32. On January 4, 1883, the President ordered the Walapai Reservation set aside. *Executive Orders Relating to Indian Reservations*, Government Printing Office, 1912, page 14.

33. In 1887 the General Allotment Act was passed. This provided for the allotment of lands in severalty to Indians on the various reservations, and for the means by which Indians could procure rights outside reservations. Excerpts from the act are found at pages 46-47, *supra*.

34. In 1891, Congress passed an act to establish a court of private land claims for Arizona (pages 51-54, *supra*). This act had for its general purpose the two-fold object contained in the act of 1851 for California, namely, to ascertain the existence, validity, and boundaries of private land rights created by Mexican and Spanish law, and the complementary purpose to ascertain the public domain, not covered by such rights, and which was subject to disposition by Congress.

35. In 1899 Congress published the 18th Report of the Bureau of American Ethnology, Part II, (1896-7) which shows that from the Rio Grande to the Colorado River the

title to the lands occupied by the several Indian tribes was assumed by the United States, and that the Indians were assigned to reservations. All of Arizona is shown to have been occupied by Indians and no voluntary cessions are recorded.

36. April 21, 1904, Congress, because of the many instances in which the Executive had extended Indian reservations over privately owned property, provided that in such instances the owner of private lands should have the option to exchange them for lands in the public domain outside such reservation. 33 Stat. 189, 211; p. 62, *supra*.

37. June 20, 1910, the Enabling Act for New Mexico and Arizona was enacted. (36 Stat. 557, pp. 62-64, *supra*.)

38. The Constitution of Arizona, adopted in 1912, excerpts from which are printed at pages 63 and 64, *supra*, among other things provides as follows (Art. XX, paragraph Fourth):

> "Fourth. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries *thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty*, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." (Emphasis supplied.)

39. May 25, 1918, Congress prohibited the creation of any new or additions to old reservations in New Mexico and Arizona without an act of Congress. (40 Stat. 561, 570; p. 67, *supra*.)

40. Under the Taylor grazing act, Mohave County outside the reservation is administered as privately owned

lands and public lands. (48 Stat. 1269, 49 Stat. 1976; pp. 69-75, *supra.*)

41. On May 6, 1935, the Honorable John Collier, Commissioner of Indian Affairs, gave testimony before the Senate Committee on Indian Affairs (R. 101-107.)

The bill was passed by both houses, and became the subject of consultation between the President, the Secretary of the Interior, the Attorney General, and the Treasury Department. It was vetoed on June 30, 1936. Commissioner Collier, in March, 1937, went before the Senate Committee in connection with a bill to give the Indians gratuities and gave the reasons for the veto of the prior act. They were simple: there had never been any legal right in the Indians of the Mexican cession. To establish by the precedent of the vetoed bill that Indians in whom no rights had ever been created did have a legal right coexistent with their possession would be to involve the Treasury of the United States in untold liability (California Indians Jurisdictional Act, Hearings before the Committee on Indian Affairs, United States Senate, Seventy-fifth Congress, First Session, on S. 1651 and S. 1779, Government Printing Office, 1937.)

We call special attention to the following:

> "In other words, Spain did not recognize the possessory right except as something which might be persuasive with the sovereign to make a grant, a consideration that might enter into the making of a grant. In other words, a possessory right had no legal existence; it was merely a factor in policy. That is very well known to Senator Chavez from his knowledge of the New Mexican law." (R. 102.)

In speaking of the Treaties with the California Indians, referred to in par. 6, above, Mr. Collier gave the testimony appearing at R. 103.

B. *Conclusively Showing the Clear Intent of Congress to the Effect That in the Act of 1866 the Lands in Controversy Were Granted to the Atlantic and Pacific Railroad Company and Confirmed and Reaffirmed in Its Successor Company, the Santa Fe Pacific Railroad Company, Respondent in This Case.*

We now come to present for the consideration of the Court the legislative and administrative history of the railroad land grant.

1. Within five years after the enactment of the granting act, or on April 20, 1871 (17 Stat. 19, p. 42, *supra*), Congress passed an act permitting the Atlantic and Pacific Railroad Company to mortgage its road and other property. Pursuant to the power contained in this statute, the Atlantic and Pacific in 1880 mortgaged its property.

2. The railroad not having completed the entire line provided for in the Act of 1866, Congress passed the Act of July 6, 1886 (24 Stat. 123, p. 44, *supra*), declaring that all the lands, excepting the right of way, etc., theretofore granted to the Atlantic & Pacific, adjacent to and coterminous with the uncompleted portions of the main line, embraced within both the granted and indemnity limits, were thereby declared forfeited and restored to the public domain.

3. Congress, by act of March 3, 1897 (29 Stat. 622, pp. 56-60, *supra*), in defining the rights of purchasers under mortgages concerning the Atlantic & Pacific, enacted that when any mortgage made by the Atlantic & Pacific is foreclosed and any sale of property covered by said mortgage is made, the purchasers are to constitute a corporation with the same powers and privileges as given to the Atlantic & Pacific under the granting act. The act provided that nothing therein contained should be construed as making any additional grant of lands to such successor

corporation, or as a waiver of any rights of the United States.

The act then requires the relinquishment in writing to the United States by the purchaser of all claim to lands granted embraced within the granted indemnity limits adjacent to uncompleted portions of the road on the date of the act. It then provides for the rights of the parties in the case of failure of the title to any lands conveyed or contracted to be sold by the Atlantic and Pacific to any bona fide settler and occupant, and then provides:

> "* * * That in case any uncompleted contracts for the purchase of land shall be pending at the time of such foreclosure sale, such new company shall, upon payment to it of any unpaid balance of purchase money for such land at the time provided in such contracts for the sale thereof, convey and release to the holders of such contracts all its title, interest, and estate in and to the land embraced in such contracts."

4. Subsequently, by Act of June 27, 1902 (32 Stat. 405, pp. 60-62, *supra*), the Santa Fe Pacific, which had purchased the Atlantic & Pacific, was authorized to sell or lease its railroad and other property to The Atchison, Topeka and Santa Fe Railway Company. The act required the payment of a tax of $175 a mile to the Territories of New Mexico and Arizona in lieu of all other taxes on said property, except the land-grant lands which were to remain chargeable with taxes as assessed and collected under the laws of those Territories.

5. March 12, 1872, the map of definite location through Arizona and New Mexico was filed with the Secretary of the Interior. (R. 50.) May 17, 1872, the Commissioner of the General Land Office ordered withdrawn from settlement and other disposition all the lands the title to which then vested in the railroad and are now involved in this litigation. That order was transmitted to the land office at Prescott, Arizona, together with a plat showing the map of definite location. (R. 57.)

6. In 1874, Congress passed an act for the relief of settlers on railroad lands. (18 Stat. 194, p. 42, *supra.*)

7. In 1876, July 31, Congress provided in the appropriation act that before any land granted to any railroad company by the United States shall be conveyed to such company there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company. (19 Stat. 102, 121, p. 43, *supra.*)

This act was superseded by the act of June 25, 1910 (36 at. 834), copied in full at pages 64-66, *supra.* The history of the departmental construction under the act of July 31, 1876, down to and including the act of June 25, 1910, a period of thirty-four years, is set forth in detail, with respect to the Atlantic and Pacific and its successor, the Santa Fe Pacific Railroad Company, in the decision of *Santa Fe Pacific R. R. Co.* v. *Lane*, 244 U. S. 492.

8. During the period from 1878 to 1886, the President transmitted annually to Congress reports of railroads in default, reports stating that the executive could not forfeit the land grant on account of such default and only Congress could forfeit, and that until Congress should forfeit the railroads had the right to construct and, to the extent of construction, remove the conditions subsequent from the fee of the lands owned by them.

In 1880 Attorney General Devens advised the Secretary of the Interior that until Congress elected to forfeit the company was entitled to construct, earn the lands title to which was vested in it, and that until Congress forfeited it was the duty of the President to accept the 25-mile sections as constructed and cause patents to issue to the lands. Construction commenced at Isleta in 1880 was finally completed to the Needles on the Colorado River before June 30, 1883. Progress of construction was reported annually to Congress. In 1882, the Attorney Gen-

eral of the United States gave the same advice to the President that he did to the Secretary of the Interior, mentioned above, in 1880. In December, 1882, the Secretary of the Interior reported to the House of Representatives that the land grant to the Atlantic and Pacific could only be forfeited by Congress, and transmitted copy of Attorney General Devens' opinion of 1880 above referred to. In 1883, the last 25-mile sections to the Needles were accepted by the President under Section 4 of the granting act. From this time forward the United States exacted and received, and still continues to exact and receive, rate concessions in payment for the land grant provided for by the granting act. (R. 57-60.)

9. In 1886 (24 Stat. 143, p. 44, *supra*), Congress passed an act to provide for taxation of railroad grant lands and for other purposes.

10. March 3, 1887 (24 Stat. 556, p. 47, *supra*), Congress passed an act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes.

11. On March 4, 1913 (37 Stat. 1007, p. 66, *supra*), Congress passed an act for the relief of Indians occupying railroad lands in Arizona, New Mexico, or California.

12. August 24, 1922, Congress passed an act to permit adjustment of conflicting claims to certain lands in Mohave County, Arizona. (42 Stat. 829, p. 68, *supra.*)

13. Then, as the summation of all of this legislation and executive action, there appears the act of February 20, 1925 (43 Stat. 954, p. 68, *supra*). This act was passed in pursuance of a direct and specific request of the Secretary of the Interior in a report to Congress in 1923. This report of the Secretary of the Interior is quoted in full.

"DEPARTMENT OF THE INTERIOR.

"Washington, December 6, 1923.

"*Hon. Selden P. Spencer,*
"*Chairman, Committee on Indian Affairs,*
"*United States Senate.*

"*My Dear Senator Spencer:* I have the honor to transmit herewith the draft of a bill to provide for exchanges of Government and privately owned lands in the Walapai Indian Reservation, Ariz., so that the lands retained for Indian purposes may be consolidated and held in a solid area so far as may be possible.

"The Walapai Reservation was established Executive order of January 4, 1883, and the total area thereof is approximately 731,000 acres. The title to the odd-numbered sections therein passed to the Atlantic & Pacific Railroad Co., under the provisions of the act of July 27, 1866 (14 Stat. L., p. 292). The company's grant attached on March 12, 1872, the date of the definite location of the road through the locality, this being 10 years prior to the establishment of the Indian reservation. There is therefore divided ownership within the reservation boundaries, the title to the even-numbered sections being in the Government for the Indians and the title to the odd-numbered sections being in the Santa Fe Pacific Railroad Co. as successor in interest to the Atlantic & Pacific Railroad Co.

"The act of April 21, 1904 (33 Stat. L., p. 211), provides that any private land over which an Indian reservation has been extended by Executive order may be exchanged by the owners for lands outside of the reservation, but in view of the act of May 25, 1918 (40 Stat. L., p. 570), which prohibits the creation of an Indian reservation or an addition to one already created within the States of New Mexico and Arizona except by act of Congress, this Department has held that an exchange under the act of 1904 might be considered as a violation of the spirit and intent of the act mentioned.

"Under the provisions of the act of June 25, 1910 (36 Stat. L., p. 834), the Santa Fe Railroad Co. applied to have the odd-numbered sections identified by survey. The company furnished its share of the necessary expense and the survey has been completed and approved. There is therefore no question as to the title of the railroad company to the odd sections. The identification of the railroad sections and complete passing of title has brought about a condition which causes considerable trouble and embarrassment in administering the affairs of the Walapai Indians. Before the odd-numbered sections had been actually identified by a survey and marked on the ground, the Department held that it had authority to lease as grazing districts the unsurveyed lands within the reservation and apply the rental for the benefit of the Indians; and the Indians otherwise have had practically the free and unrestricted use of their reservation lands.

"This condition has been changed, and the railroad company, through their attorneys, are alleging that the Indians are committing waste upon the company's lands by felling and removing the timber, and by grazing lands for which the company has received no benefit and given no authority. This Department has been asked to make an investigation to ascertain the extent of these unlawful acts, and it has been stated to us that the company would like a settlement of these difficulties without resorting to suit. Under the proposed bill a consolidation could no doubt be effected whereby the railroad company would relinquish a part of their odd-numbered sections and take in lieu thereof the even-numbered sections within its retained area. There would still be a divided ownership between the railroad company and the Government within the boundaries of the reservation, but the land would be held by each in practically solid areas.

"The legislation requested is similar to that authorized by the act of March 3, 1921 (41 Stat. L., p. 1239), and it is considered that a settlement of the present and future difficulties by such a method would be a good business arrangement. To allow matters to re-

main in their present condition will be the cause of constant friction between the railroad company or its grantees on the one side, and the Indians and the Government. While a consolidation would reduce by about one-half the area the Indians have heretofore used, yet under the circumstances it seems that this is the only action that should be taken to prevent future trouble. This Department would therefore be glad to see the inclosed bill or legislation similar thereto enacted into law.

"*Very truly yours,*

"HUBERT WORK,
*Secretary.*"

The proposed bill, attached to the above letter, was enacted in identical language. (43 Stat. 954, p. 68, *supra.*)

14. In 1931, negotiations under the act of 1925 were completed, the lands of the first cause were valued, and a specific division agreed upon. This agreement included a compromise adjustment of the Peach Springs controversy, reflected in the decree entered in the Peach Springs case in 1931. The other component parts of the settlement agreement have been repudiated by the United States. See pages 65-66 of our Brief.

15. Section 321 (b) of the Transportation Act of 1940, and what has been done thereunder, has been set forth in Part IV, pp. 77-88, *supra.*

## PART VI.

A SUMMARY OF INFORMATION ON OCCUPANCY PRESENTED BELOW.

The trial court was referred (R. 30-33) to the historic and public documents which demonstrate that the Walapai were originally a disunited band of non-agricultural savages, who occupied exclusively no definite territory and no place or places for any great length of time. The Walapai made their debut in white history in Father

Garces' Diary. He found them in 1776 near the site of Kingman, eating food and wearing clothes characteristic of wild nomads; but other Indians, not Walapai were to the East. Another group of Indians, called Yabipai (W. P., 4-6), was found where the 1883 reservation was subsequently located (*Ibid.*, 6-11). Garces later reports that from Diamond Creek, on the subsequently established reservation, to the Black Mountains, a stretch of country in the northwest portion of that here in issue, Yabapai-Cuercomaches were found (R. 85-9). Pedro Font, who drew a map in 1777 and was an intimate of Garces, showed Yavapai north of Walapai (R. 91). The Eighteenth Annual Report of the Bureau of Ethnology places Walapai where Font placed some, at least, of the Yavapai (R. 92-3). The American Bureau showed that Walapai inhabited lands south and west of the 1882 reservation, but were on the lands that became the reservation very slightly, if at all.

Seviches, Yavapai, and Apaches were all over the territory here at issue in historic times (R. 31-2). Lieutenant Wheeler reported that Walapai were wild and roving, and that their life had carried them "beyond the notion of anything like order even among their own people." Major Price stated they had no tribal cohesion, appearing in independent bands in their hostility to the settlers. Reference is made to the shifting pattern found generally prevalent in the Southwest by Mr. Bandelier in his studies carried on from 1880 to 1885 (R. 98-9).

We have reviewed in the brief (pp. 49 to 60) the disruption of historic habits of life occasioned by the decision of the United States that no Indian right was to be respected or accorded except in reservations. The Walapai were first driven about, finally subdued, and forced to go, in 1874, to their lower Colorado River Reservation. Thereafter, in 1875, they fled, wandered for a while, and were soon forced to abandon the life of the

chase and hunt and live in settlements on the outskirts of the railroad towns. Various official reports made from time to time showed their location and their condition. Lieutenant Colonel Brayton's census, in 1888, showed them to number 646, living at various places, mostly off the 1883 reservation, working for white people, a few of them cultivating gardens (W. P., 165-8). "The Indians work in the mines and chop wood and sell it to the mill. The women wash clothes and gather hay * * *" (W. P., 164) There were 584 of them in 1900 (W. P., 192). The School Superintendent reported in 1902:

> "The Walapai number 535. Some of them work very well and earn a living. Only the old and sick will receive food from the Government. The regular issue of rations has been abolished. They earn a living in various ways—cutting and hauling wood, doing odd jobs around the towns, working in the mines and for stockmen, and raising small gardens in the mountains in different places where water is found. But few live on the reservation, owing to the scarcity of water and the infertility of the soil." (W. P., 198.)

The Walapai Superintendent reported in 1905:

> "* * * Some of the younger Indians work for cattlemen, others work in the mines, and those who live near towns performing many odd jobs. I fear, though, that among the latter class the women are the greater wage-earners. While they are self-supporting, they are in many ways far from civilization. Nearly all have small, poorly constructed houses, made of anything and everything that can be used in the construction of a house—mud, tin cans, dry-goods boxes, poles, railroad ties, etc.
>
> "* * *
>
> "The Walapai Reservation comprises 730,880 acres of the most valueless land on earth for agricultural purposes. It is unsurveyed and unallotted. Scarcely a dozen families live on the reservation." (W. P., 201.)

The Superintendent reported in 1908:

> "While the superintendent is acting Indian agent,

we have often wondered whether there is really such a thing as the Walapai Agency. The reservation, set aside by Executive order of January 4, 1883, comprises 730,880 acres of the wildest, roughest country that ever lay in God's out-of-doors (apologies to Quayle). An Indian could not live on it if he wanted to." (W. P., 201-2.)

The Superintendent reported in 1909:

"The Walapai Indians are scattered for almost 200 miles along the Santa Fe Railroad, and do what work they can find to do. Some of them make good cowboys; some team, using the wagons which were issued to them; some few herd sheep and others do what work by the day as offers. * * * But few live on the reservation because of the lack of water and those do not live there permanently." (W. P., 202.)

The Board of Indian Commissioners reported in 1916:

"There is not to exceed 160 acres of irrigable and tillable land, but many of the Indians have squatted upon small patches off the reservation and manage to eke out a subsistence by raising small truck. Not more than 10 families reside permanently on the reserve. The remainder live near towns along the line of the A. T. & S. F. R. R., and pick up a living by working for whites. Some of the women make and sell baskets.

"According to the census just completed, there are 477 Walapais. They are just about holding their own in the matter of numbers." (W. P., 203.)

The Board of Indian Commissioners reported in 1924:

"* * * Its population of 440 Walapai Indians, with the exception of a few families, live in towns scattered along the Santa Fe Railroad for a distance of 100 miles and more. Owning as they do a great area of land, these Walapai are practically nonreservation Indians. They are more than that, for they live on lands of white men without paying rent—they are squatters. * * *

"* * *

"With few exceptions their homes are crude, hastily-thrown-together shacks, built of the odds and ends of dump piles—old boxes, bits of awning, cast-off

sheets of roofing material, and the like. These shacks are scattered over some white man's land on the outskirts of the town. Kingman, the largest city in the Walapai country, has four of these Indian squatter colonies. One of them is on the edge of the city's dump." (W. P., 204-5.)

The Board of Indian Commissioners reported in 1928:

"The Walapai Indians, numbering somewhat over 400 individuals, live on the outskirts of the small towns along the Santa Fe Railroad from Seligman on the east to Kingman and Chloride on the west, a distance of nearly 100 miles. The large Walapai Reservation of 730,880 acres is a rough, arid territory bordered on the north by the Grand Canyon of the Colorado. This land is only suitable for stock raising on a large scale, and very few Indians have ever lived on this tract, which was created for them by an executive order in 1883.

"Most of the tribe are squatters, living in ugly, dilapidated shacks built of old lumber, railroad ties, sheet iron, and any other material that may be picked up around the five or six small towns where they have been congregated for many years. • • •

"• • • Principally because of the demand for unskilled labor, the Indians are allowed to remain in their nondescript camps on the edges of town; otherwise the whites undoubtedly would have forced these unprepossessing squatters away from the neighborhood." (W. P., 208.)

The Walapai physician recommended in 1931:

"• • • A concerted effort to move these Indians from their present unsightly and unhygienic homes to acceptable sites on the reservation should be made." (W. P., 288.)

The reports since 1931 have been statistical only. They are carried under the heading "Truxton Canyon Agency," located on the school reservation created at Truxton in 1900 (W. P. 189), which has jurisdiction over this reservation and the Indians there employed and in school, and the 1883 "reservation" as well. The following table

shows the total number of Walapai, the total number residing in the jurisdiction where enrolled, and the number of those who were pupils in the Truxton boarding school:

| Source and year | Total number | Total number residing in jurisdiction where enrolled | Number enrolled in boarding school |
|---|---|---|---|
| 1932 Report Commissioner Indian Affairs 35, 57 | 437 | 170 | 95 |
| 1933 Report Secretary of Interior 115, 145 | 440 | 175 | 99 |
| 1934 Report Secretary of Interior 126, 156 | 440 | 177 | 120 |
| 1935 Report Secretary of Interior 160, 170 | 447 | 181 | 121 |
| 1936 Report Secretary of Interior 211, 220 | 444 | 178 | 126 |
| 1937 Report Secretary of Interior 252 | 454 | 321 | no figures |
| 1938 Report Secretary of Interior | no figures | no figures | no figures |

The reports 1932 to date contain no more particular information about the Walapai; but they show that with the advent of the depression, the tendency of Indians was to go to their reservations because of the lack of employment opportunities outside. In 1937 the general tendency was reversed: "This may perhaps be attributed to better times, just as the reverse movement from 1930 to 1934 may be due to the depression." (1937 Report of the Secretary of the Interior, 249.) Government employment also had its effect: "After the depression is over and the emergency grants cease, what will happen to the now working Indian"? (1935 Report of the Secretary of the Interior, 118.) "The demand for women and girls for household work still continues beyond the supply—there have been more jobs for Indian women and girls at agencies, schools and hospitals, and increased employment of Indian men has meant that fewer women have had to take jobs away from home. Also, there has been an effort on the part of social workers—to raise the standards of domestic employment." (1936 Report of the Secretary of Interior, 204-205.)

# PART VII.

## Miscellaneous.

EXTRACTS FROM HOUSE EXECUTIVE DOCUMENT NO. 1, PART 5, 42ND CONGRESS, 3RD SESSION:

From Report of Commissioner of Indian Affairs:

"The system now pursued in dealing with the roving tribes dangerous to our frontier population and obstructing our industrial progress, is entirely consistent with, and, indeed, requires the occasional use of the military arm, in restraining or chastising refractory individuals and bands. Such a use of the military constitutes no abandonment of the 'peace policy,' and involves no disparagement of it. It was not to be expected—it was not in the nature of things—that the entire body of wild Indians should submit to be restrained in their Ishmaelitish proclivities without a struggle on the part of the more audacious to maintain their traditional freedom. In the first announcement made of the reservation system, it was expressly declared that the Indians should be made as comfortable on, and as uncomfortable off, their reservations as it was in the power of the Government to make them; that such of them as went right should be protected and fed, and such as went wrong should be harassed and scourged without intermission. * * * Such a use of the strong arm of the Government is not war, but discipline." (pp. 393-4.)

"It belongs not to a sanguine, but to a sober view of the situation, that three years will see the alternative of war eliminated from the Indian question, and the most powerful and hostile bands of today thrown in entire helplessness on the mercy of the Government. * * *

"Toward the south the day of deliverance from the fear of Indian hostility is more distant, yet it is not too much to expect that three summers of peaceful progress will forever put it out of the power of the

tribes and bands which at present disturb Colorado, Utah, Arizona, and New Mexico to acclaim consideration of the country in any other attitude than as pensioners upon the national bounty. The railroads under construction, or projected with a reasonable assurance of early completion, will multiply fourfold the striking force of the Army in that section; the little rifts of mining settlement, now found all through the mountains of the southern Territories will have become self-protecting communities; the feeble, wavering line of agricultural occupation, now sensitive to the faintest breath of Indian hostility, will then have grown to be the powerful 'reserve' to lines still more closely advanced upon the last range of the intractable tribes." (p. 397.)

"For those tribes and bands which have no reservations secured to them by treaty, from which they can hope in the course of time to realize a civilization and improvement fund, provision will still require to be made by law. Their right to endowment is none the less clear than the right of other tribes whose fortune it was to deal with the United States by treaty, before Congress put an end to the treaty system, with its many abuses, and absurdities. We have received the soil from them, and we have extinguished their only means of subsistence. Nothing in the history of the United States justifies the belief that either Congress or the country will be wanting in justice or generosity in dealing with the necessities of a people who have been impoverished that we might be rich." (p. 401.)

"The following are the railroads which pass through Indian reservations, and by which the interests of the Indians are, or may be, affected. * * *

"ATLANTIC AND PACIFIC RAILROAD, * * * [pp. 463, 465.]

"* * * In passing from the point on the Canadian River determined by this company, to Albuquerque, the former railroad would pass through the reservation of the Kiowas and Comanches, established for these Indians under the provisions of the treaty of October 21, 1867, and, in passing from Albuquerque to California, would pass near the reservation of the Navajoes, which is in Arizona and New Mexico, estab-

lished by the provisions of the treaty of June 1, 1868, and would probably pass through Camp Verde reservation, for the Apaches in Arizona. It is not known whether the immediate construction of this road is being proceeded with or not. The present attitude of some of the Indians on the proposed line of the same is not very favorable for peaceable operations. At the same time the Government can in no way better straighten itself in its attitude toward the Indians than by favoring and forwarding the railroad by all reasonable and proper means, certainly, at the least, by strong and sufficient escorts and garrisons to enable the road to go on as rapidly as its finances will allow. The position of the Government toward the Kiowas and Comanches and the Apaches, and the steps proposed to be taken with them in case of further hostilities, have been elsewhere freely spoken of. As previously stated, the number of Indians between this proposed route and the Union and Central Pacific Railroads on the north is 61,000, and the number between the road and Mexico on the south, 85,000." (p. 468.)

Attached to the report of the Commissioner of Indian Affairs is a complete account of General Howard's missions to Arizona in 1872, the object being to require Indians, if they would not peaceably submit, to go upon reservations, to remove them from the path of white settlers. General Grant's letter of March 6, 1872, to General Schofield, Commanding Military Division of the Pacific, at page 545, is a sufficient reflection of policy:

> "Indians who will not put themselves under the restraints required will have to be forced, even to the extent of making war upon them, to submit to measures that will insure security to the white settlers of the Territories.
>
> "It is not proposed that all the protection shall be to the Indians, but that, if they will submit to rules and limitations laid down for them, protection by military force shall be mutual."

General Howard summarily created and abolished In-

dian reservations (see, for example, his order of May 26, 1872, reported at p. 556, abolishing Camp Grant Indian Reservation, extending the White Mountain Reservation; his order of October 16, 1872, reducing the White Mountain Reservation, abolishing McDowell, Date Creek, and Beale Springs Reservations, and ordering Superintendent of Indian Affairs to "consult the Indians and take them to other reservations." p. 562).

The Secretary of the Interior had no difficulties in generalizing the policy. His report, which is the covering report transmitting to the President the report of the Commissioner of Indian Affairs, and which were together quoted by the President to Congress, contains the following:

> "• • • We are assuming, and I think with propriety, that our civilization ought to take the place of their barbarous habits. We therefore claim the right to control the soil which they occupy, and we assume that it is our duty to coerce them, if necessary, into the adoption and practice of our habits and customs. In doing this, it seems to me that humanity and justice, as well as honor and dignity, demand that our conduct should be characterized, so far as practicable, by forbearance and uniform kindness of treatment.
>
> "• • • The reservation system withdraws the great body of the Indians from the direct path of our industrial progress, and allows the work of settlement and the extension of our railways to go forward up to the full limit of the capacities of capital and immigration, with absolutely no check or diminution on account of Indian hostility, actual or apprehended. There is not a mile of railway which has authority of law for its construction, and for which the capital stands ready, which is unbuilt today by reason of danger from Indian attack." (p. 4.)
>
> "The military occupancy of posts adjacent to the Indian country has not been withdrawn, and should not be so long as there is the slightest danger of Indian incursions upon the settlements, or attempts to prevent the extension of new settlements in all legitimate

directions. A show of strength will be needed for some time to enforce the new policy.

"The policy of confining the wild tribes to smaller reservations is regarded as of the utmost importance; and carried forward to its full extent, will result in restricting them to an area of sufficient extent to furnish them farms for cultivation, and no more. The rapid disappearance of game from the former hunting-grounds must operate largely in favor of our efforts to confine the Indians to smaller areas, and compel them to abandon their nomadic customs, and establish themselves in permanent homes. So long as the game existed in abundance there was little disposition manifested to abandon the chase, even though Government bounty was dispensed in great abundance, affording them ample means of support. When the game shall have disappeared, we shall be well forward in the work in hand" (pp. 5-6).

"The duty of the nation toward the original occupants of the soil, who have become the wards of the nation by the fortunes of conquest and territorial acquisition, seems to me plainly marked out. The Executive is endeavoring in good faith, and in what is deemed the most proper and efficient manner, to fulfill the nation's duty toward a helpless and benighted race. He has sought to combine influences which may affect their physical and moral elevation and improvement. The missionary authorities have an entire race placed under their control, to treat with in accordance with the teachings of our higher Christian civilization" (p. 9).

LETTER FROM CHARLES D. POSTON TO GEORGE D. LEIHY.

"Thirty-Eighth Congress
House of Representatives.

United States of America.
69 Broadway, 12 April, 1865.

*Mr. Geo. W. Leihy,*
*San Francisco.*

MY DEAR SIR:

I remitted you by last steamer a letter from the Com'r of Indian Affairs with a hurried note from myself.

The Com'r requested me to give you such instruction as would enable you to enter upon your duties; but from your understanding of the circumstances of the country this will be scarcely necessary.

The object in securing your appointment as my successor was to have the ideas which we have canvassed carried out, *i. e.*, to colonize the friendly Indians on the Colorado and leave the Apaches and wild tribes to the tender mercies of the Military Authorities and the frontiersmen.

The Apaches richly deserve extermination and I hope the last one of them will be killed, and I have no objection to seeing them burnt, alive, men, women and children.

As a Christian nation it is our duty to separate the wheat from the chaff but not less a duty to punish the guilty.

It will not be possible to carry out my ideas without the corresponding means applied for but not obtained. You will admit that a very creditable effort was made but the whole bill was lost including about seven millions.

There is a small amount of goods shipped to Wm. I. Coleman & Co. bought against my consent and before my arrival—Never allow yourself to make a requi-

sition for goods. Let all your requisitions be for money. The articles needed by the Indians are few and simple—seed corn, hoes, axes, etc. etc. are all they need at present.

If we can hereafter get an appropriation of $150,000 it will do to begin the reservation as projected and set forth in my speech. The Reservation was made as laid off and no power short of Congress can change it, so the Indians may as well commence settling within the Reservation as no other arrangement will be made for them.

The appropriation for this year was $20,000. Twenty Thousand Dollars which will be placed in your hands as soon as your bond is received.

You will only be held accountable for what comes to your hands from the Government and not for what comes through me or the old wrecks. I have to account for all that as best I can. Collect the balance due from C. Behreng. White & Noyes account is all settled by me. They will receive the balance by next mail. Wm. R. Murray gets $800 for the Weaverville people same way.

Now, my dear Leihy, do the best you can and always do what is right.

Your friend,
CHARLES D. POSTON."